

OHIO STATE LAW JOURNAL

VOLUME 66, NUMBER 4, 2005

Predatory Lending and the Military: The Law and Geography of "Payday" Loans in Military Towns

STEVEN M. GRAVES* AND CHRISTOPHER L. PETERSON**

A heated national debate has developed over whether one type of high-cost predatory lender, commonly known as "payday lenders," target financially vulnerable military families and whether the law protects them from such predation. Writing within the relatively new interdisciplinary "law and geography" movement, this Article provides geographic evidence that payday lenders do aggressively target American military personnel, irrespective of most forms of legal regulation.

This Article first provides a comprehensive introduction to payday lending business practices and to the financial vulnerability of military personnel. Next, this Article presents empirical research gathered from an examination of 20 states, 1516 counties, 13,253 ZIP codes, nearly 15,000 payday lenders, and 109 military bases. High concentrations of payday lending businesses in counties, ZIP codes, and neighborhoods in close proximity to military bases were found. Observations were controlled by comparing the density of payday lender locations to bank locations.

Each of the 20 states studied had a different legal and regulatory strategy for addressing payday lending. However, the only regulatory strategy which prevented payday lenders from targeting military personnel was the aggressive and consistent enforcement of civil and criminal usury law. Going beyond the debate over predatory lending to military personnel, this research provides a realist check on pure legal reasoning and unfounded faith in current consumer protection rules.

*Assistant Professor of Geography, California State University, Northridge. The author gratefully acknowledges generous financial assistance from the College of Social and Behavioral Sciences at California State University, Northridge.

**Assistant Professor of Law, University of Florida, Frederic G. Levin College of Law. The author wishes to thank the following for helpful conversations, comments, encouragement, research assistance, and suggestions: Reed Clary, Lynn Drysdale, Mark Fenster, Diana Henriques, Lyrrisa Lidsky, Diane Mazur, Tera Peterson, Buddy Schulz, Sarah Stoddard, Michael Wolf, and Barbara Woodhouse. Special thanks to Blake Delaney for exceptionally thorough and helpful research assistance.

TABLE OF CONTENTS

I. INTRODUCTION	655
II. BACKGROUND.....	660
A. <i>Payday Lending</i>	660
1. <i>What Are Payday Loans?</i>	660
2. <i>Payday Lending in History: Ancient Lineage and Recent Resurgence</i>	665
B. <i>Financial Vulnerability of Military Personnel</i>	675
1. <i>Demographic Predisposition</i>	675
2. <i>The Military Compensation System</i>	679
3. <i>The Dislocation of Military Service Members</i>	681
4. <i>Military Culture and Financial Obligations</i>	685
C. <i>Payday Lending to Military Personnel</i>	686
1. <i>Congress's Position: The Servicemembers' Civil Relief Act</i> ..	686
2. <i>The Debate: Do Payday Lenders Target Military Service Members?</i>	690
III. METHODS.....	693
A. <i>Law and Geography: Theoretical Considerations</i>	693
B. <i>Empirical Methodology</i>	697
1. <i>Study Overview: Sample, Scales of Resolution, and Control Group</i>	697
2. <i>Data Sources and Mapping Techniques</i>	699
3. <i>Statistical Analysis of Payday Lender Location Density</i>	701
IV. RESULTS: THE LAW AND GEOGRAPHY OF MILITARY PAYDAY LENDING JUXTAPOSED.....	704
A. <i>Federal Banking Law and the Marquette Doctrine: A Backdrop to American Payday Lending</i>	704
B. <i>State Law and Empirical Results</i>	709
1. <i>Alabama</i>	709
2. <i>Arizona</i>	715
3. <i>California</i>	718
4. <i>Colorado</i>	725
5. <i>Delaware</i>	733
6. <i>Florida</i>	740
7. <i>Idaho</i>	746

8. <i>Kentucky</i>	749
9. <i>Louisiana</i>	756
10. <i>Missouri</i>	761
11. <i>New York</i>	766
12. <i>North Carolina</i>	768
13. <i>Ohio</i>	777
14. <i>Oklahoma</i>	781
15. <i>South Carolina</i>	787
16. <i>South Dakota</i>	792
17. <i>Tennessee</i>	797
18. <i>Texas</i>	800
19. <i>Virginia</i>	810
20. <i>Washington</i>	815
V. ANALYSIS	822
A. <i>Empirical Discussion</i>	822
B. <i>Legal and Public Policy Considerations</i>	825
1. <i>Voluntary Compliance and Industry Best Practices</i>	825
2. <i>State Law</i>	827
3. <i>Federal Law</i>	829
4. <i>Military Leadership on Payday Lending</i>	830
VI. CONCLUSION	832

I. INTRODUCTION

“Support the troops” has become a national rallying cry. Because we live in a complex and dangerous world, we as a society rely on the military to protect us. President George W. Bush recently stated that “Americans live in freedom because of our veterans’ courage, dedication to duty, and love of country.”¹ This sentiment speaks to the fundamental debt of honor and respect we owe the women and men who make great sacrifices, sometimes the ultimate sacrifice, to protect us.² In satisfying this debt, the United States expends vast resources in caring for current and former military personnel and their families.³ The

¹ President George W. Bush, Proclamation on Veterans Day (Nov. 9, 2004) (transcript available at <http://www.whitehouse.gov/news/releases/2004/11/20041109-5.html>).

² See BERNARD J. VERKAMP, *THE MORAL TREATMENT OF RETURNING WARRIORS IN EARLY MEDIEVAL AND MODERN TIMES* 103–08 (1993) (discussing differing social approaches to reassimilating returning veterans with complex emotional and moral problems).

³ One commentator has emphasized the relative cost of family support programs:

Department of Defense maintains a comprehensive system of social services aiming to meet every need of every member of every armed service family.⁴

Nevertheless, profound questions remain about the extent and nature of our support of military personnel. In recent years, scholars have asked compelling questions about the quality of life and overall well-being of military families.⁵

Indeed, \$25 billion of Defense Department spending on family support is actually \$3 billion more than the Navy will spend this year developing and buying new ships, submarines, and aircraft. It exceeds what the Army, Navy, and Air Force each spend on their worldwide operations in a year. It equals nearly half of the Army's total budget.

John Luddy, *Meet the U.S. Government's Biggest Family Welfare Program*, AM. ENTERPRISE, May/June 1996, at 63.

⁴ These programs include: a system of worship services, locations, and chaplains, government housing, housing subsidies, cost of living salary adjustments, and relocation assistance programs, day care, youth activities; child development programs, and single-parent support programs; mental health, substance abuse, suicide prevention, marital, family, legal, and financial counseling; recreation, fitness, and entertainment opportunities, commissaries and subsistence allowances, and a comprehensive medical and dental system for military personnel, their families, and veterans. RICHARD BUDDIN, BUILDING A PERSONNEL SUPPORT AGENDA: GOALS, ANALYSIS FRAMEWORK, AND DATA REQUIREMENTS 1-2 (Rand Publication Series MR-916-OSD, 1998); M. AUDREY BURNAM ET AL., ARMY FAMILIES AND SOLDIER READINESS 7 (Rand Publication Series R-3884-A, 1992); Sondra Albano, *Military Recognition of Family Concerns: Revolutionary War to 1993*, 20 ARMED FORCES & SOC'Y 283, 297 (1994).

⁵ See, e.g., MARGARET C. HARRELL, INVISIBLE WOMEN: JUNIOR ENLISTED ARMY WIVES 110-11 (2000) (describing financial deprivation, isolation, and invisibility of spouses of junior enlisted personnel); CATHERINE LUTZ, HOMEFRONT: A MILITARY CITY AND THE AMERICAN TWENTIETH CENTURY 7-9 (2001) (describing the complex and troubling relationship between military installations and military towns); PETER A. MORRISON ET AL., FAMILIES IN THE ARMY: LOOKING AHEAD 49-51 (Rand Publication Series R-3691-A, 1989) (discussing stresses placed on military families); Gary L. Bowen et al., *Family Adaptation of Single Parents in the United States Army: An Empirical Analysis of Work Stressors and Adaptive Resources*, 42 FAM. REL. 293, 302-03 (1993) (emphasizing need for greater social support resources for single parent Army families); BURNAM, *supra* note 4, at 75 (finding that "[t]he proportion of soldiers screening positive for depression . . . is three to four times higher than that among civilians with similar gender and age characteristics"); James A. Martin & Dennis K. Orthner, *The "Company Town" in Transition: Rebuilding Military Communities*, in THE ORGANIZATION FAMILY: WORK AND FAMILY LINKAGES IN THE U.S. MILITARY 163, 172-74 (Gary L. Bowen & Dennis K. Orthner eds., 1989) (discussing morale problems stemming from isolated, tightly controlled, "company town" military installations); Dennis K. Orthner et al., *Growing Up in an Organization Family*, in THE ORGANIZATION FAMILY: WORK AND FAMILY LINKAGES IN THE U.S. MILITARY, *supra*, at 137 (discussing inadequacy of military programs treating stress placed on children and adolescents of military families); Mario R. Schwabe & Florence W. Kaslow, *Violence in the Military Family*, in THE MILITARY FAMILY: DYNAMICS AND TREATMENT 125, 129-30 (Florence W. Kaslow & Richard I. Ridenour eds., 1984) (discussing social, economic, and demographic risk factors for military family violence); Theodore G. Williams, *Substance Misuse and*

Recent events, such as soldier discontent over unarmored vehicles in Iraq, have heightened these concerns.⁶ Similarly, many have pointed to unfairness over the military's use of stop-loss orders to impose extended tours of duty.⁷ Closer to home, recent studies have increasingly found many members of the armed forces suffer a long-term earnings penalty later in life.⁸ Several commentators have suggested that military personnel may be targeted for a variety of consumer scams, such as over-priced insurance and sham investments.⁹

Similarly, a heated national debate has developed over whether abusive high-cost lenders are targeting financially vulnerable military families.¹⁰ Consumer advocates and the media have accused one group of lenders, commonly known

Alcoholism in the Military Family, in THE MILITARY FAMILY: DYNAMICS AND TREATMENT, *supra*, at 73, 77 (noting evidence of high incidence of alcoholic fathers amongst military family dependents).

⁶ See Julian E. Barnes, *A Well-Aimed Question*, U.S. NEWS & WORLD REP., Dec. 20, 2004, at 16; Charisse Jones, *Soldier Says He'd 'Feel Safer in a Volvo': Military Families Criticize Use of Unarmored Vehicles*, USA TODAY, Dec. 9, 2004, at 2A.

⁷ See Mark Fisher, *Hobson: Treat Military Fairly: Regular Troops Can Leave, but Not Guard, Reserve*, DAYTON DAILY NEWS, Jan. 4, 2004, at B1; Jones, *supra* note 6.

⁸ Alan B. Krueger, *Warning: Military Service Can Be a Drain on Later Earning Power in Civilian Life*, N.Y. TIMES, Nov. 11, 2004, at C2. This stands in stark contrast to the World War II era when military service provided disadvantaged young men "an unprecedented opportunity to better their lives through on-the-job training and further education." Robert J. Sampson & John H. Laub, *Socioeconomic Achievement in the Life Course of Disadvantaged Men: Military Service as a Turning Point, Circa 1940-1965*, 61 AM. SOC. REV. 347, 364 (1996). In contrast to the massive social intervention of the GI bill, today "policy has regressed to the point at which, for some segments of society, imprisonment is the major governmental intervention in the transition to young adulthood." *Id.* at 365; *see also* Robert L. Phillips et al., *The Economic Returns to Military Service: Race-Ethnic Differences*, 73 SOC. SCI. Q. 340, 340 (1992) (showing no significant post-service earnings benefit from military service for blacks and Hispanics).

⁹ Paul K. Davis, *Fighting Consumer Frauds Which Target Military Personnel*, DIALOGUE, Winter 2001, at 7.

Scam artists . . . have developed a talent for effectively targeting distinct groups of consumers for their sales pitches. Unfortunately, military consumers are considered particularly vulnerable by many of these companies . . . As a result, military consumers are not only subjected to the same deceptive acts and practices as consumer in general; they are also specifically targeted by unscrupulous companies.

Id. Diana B. Henriques, *Deepening Debate on Soldiers and Insurers*, N.Y. TIMES, Sept. 8, 2004, at C1 (discussing overpriced insurance sold to military personnel); Tom Philpott, *Military Update: First Command Investors Eligible for Restitution*, STARS & STRIPES, Jan. 22, 2005 (discussing Securities and Exchange Commission settlement of fraud and securities law violations).

¹⁰ CBSNews.com, *New Enemy for U.S. Troops: Debt*, Dec. 17, 2003, <http://www.cbsnews.com/stories/2003/12/17/national/printable589033.shtml>.

as payday lenders, of causing particular trouble for enlisted military personnel.¹¹ For instance, a front page *New York Times* article discussed a growing chorus of complaints that payday lenders charge exorbitant and unfair prices to unsuspecting and desperate military borrowers.¹² These critics have pointed to anecdotal evidence suggesting that payday lenders have identified the armed forces as a profitable market to exploit, leading to hardship on military families.¹³ Some military officers have agreed, going so far as to complain that payday lenders are eroding military readiness by undermining troop morale.¹⁴ These officers believe that payday lenders sabotage all of the expensive programs and services designed to preserve the quality of life for members of the armed forces.¹⁵ For their part, payday lenders say they are helping their debtors out of short-term cash problems at an affordable price.¹⁶ Payday lenders emphasize that

¹¹ Editorial, *Loan Businesses Prey on Troops*, ST. PETERSBURG TIMES (Fla.), Dec. 12, 2004, at 2P (“Not far outside the gates of many military bases lurks a predator lying in wait for unwitting troops to make a mistake. These are not terrorists but storefront businesses that offer financially naive troops quick loans at unconscionably high interest rates.”); MARK MUECKE & ROB SCHNEIDER, CONSUMERS UNION, PAYDAY LENDERS BURDEN WORKING FAMILIES AND THE U.S. ARMED FORCES 4 (July 2003) (quoting former Joint Chiefs of Staff member Admiral J. L. Jonson) (“‘There can be no question that military families are among the “targeted group.” A preponderance of payday lenders and cash advance offices are located in the immediate vicinity of our military bases.’”).

¹² Diana B. Henriques, *Seeking Quick Loans, Soldiers Race Into High-Interest Traps*, N.Y. TIMES, Dec. 7, 2004, at A1 (“Hardships . . . are becoming more common in the military as high-cost easy money lenders increasingly make service members a target market. As a result, many military people have become trapped in a spiral of borrowing at sky-high rates that can ruin their finances, distract them from their duties and even destroy their careers.”). The *New York Times* article also features preliminary results of the study presented in this Article, including a graphic reproducing of the author’s map of Ft. Lewis and McChord Air Force Base in Washington. *Id.* See also *Loan Businesses Prey on Troops*, *supra* note 11 (editorial condemning payday lending to military personnel highlighting preliminary results of research presented in this Article).

¹³ *Senator: Borrowers Trapped by ‘Payday’ Loans, High Interest*, JEFFERSON CITY NEWS TRIB. (Jefferson City, Mo.), Dec. 28, 1999, <http://newtribune.com/articles/1999/12/28/export151440.txt> [hereinafter *Borrowers Trapped*] (“Navy Capt. Robert W. ‘Andy’ Andersen calls it a ‘financial death spiral’ in which strapped sailors get short-term, high-interest ‘payday loans’ and fall into a cycle of borrowing and debt.”).

¹⁴ See Tom Shean, *Payday-Loan Bill Draws Criticism from Military: Effort to Regulate High-Interest Loans Would Backfire, They Say*, VIRGINIAN-PILOT (Norfolk, Va.), Feb. 16, 2002, at D1.

¹⁵ *Payday Loans: The High Cost of Borrowing Against Your Paycheck*, ARMY LAW., Feb. 2001, at 23 [hereinafter *The High Cost of Borrowing*]; Debbie Rhyne, *Aid Fund Offers Help to Military Personnel, Families*, MACON TELEGRAPH, Dec. 29, 2001, at B1.

¹⁶ See Doug Bandow, *Those Misguided Payday-Loan Critics*, SAN DIEGO UNION-TRIB., Mar. 25, 2004, at B11.

their customers borrow voluntarily and they accuse their critics of paternalism.¹⁷ Still, fearing a public relations nightmare, payday lenders and their trade associations have vociferously denied targeting military personnel.¹⁸

This Article attempts to ascertain whether payday lenders do in fact target members of the armed services. Employing analytical tools of the emerging interdisciplinary law and geography movement, this study compares the payday lender storefront locations in military towns across differing state legal regimes. Moreover, this Article describes and evaluates the different legal strategies that the federal and state governments have used to curtail perceived social problems associated with payday lending. In particular, we examine whether differing state legal approaches may have affected the extent to which payday lenders target military personnel. Our study systematically surveys 20 states, 1516 counties, 13,253 ZIP codes, nearly 15,000 payday lenders, and 109 military bases. We conclude that (1) there is irrefutable geographic evidence demonstrating that payday lenders are actively and aggressively targeting U.S. military personnel, and (2) all state legal strategies except for aggressive criminal prosecution of usury laws have been ineffective in deterring this commercial behavior. Our interdisciplinary use of law and geography should serve as a realist check on pure legal reasoning and unfounded faith in the efficacy of our existing legal strategies.

Part II of our Article describes the payday lending industry, frames the background of financial vulnerability facing past, current, and future military personnel, and introduces the emerging debate over payday lending to military personnel. Part III introduces leading law and geography theory and summarizes our empirical methodology. Part IV juxtaposes our empirical description of payday lender location strategies near U.S. military bases with descriptions of the payday lending legal environment in force at each location. Part V analyzes the results of this study, ultimately drawing descriptive and prescriptive conclusions for policy makers, including state and federal law makers, as well as military leaders.

¹⁷ Chris Johnson, Vice President Urgent Money Service, Letter to the Editor, GREENSBORO NEWS & REC., Jan. 7, 2002, at A6 ("I'm sure it's easy for you to sit in your office and tell your readers how 'bad' payday lenders are. We offer a service, plain and simple Our customers like our service. If they didn't, they wouldn't use us, plain and simple.").

¹⁸ Paul Fain, *The Few, the Proud, the Indebted: Payday Loan Shops Are Drawing Fire from the Military's Top Brass*, MOTHER JONES, May-June 2004, at 19.

II. BACKGROUND

A. Payday Lending

1. What Are Payday Loans?

Payday loans are high interest rate, rapidly compounding loans meant to tide over cash-short borrowers until their next paycheck.¹⁹ In a typical transaction, a customer might borrow \$200 by writing a check drawn on her personal checking account and made out to the lender for \$235.²⁰ Typically, the borrower “post-dates” the check by writing a date one or two weeks in the future.²¹ This date is the day that the parties agree the borrower will repay the loan and interest. Before making the loan, payday lenders generally verify the debtor’s identity by asking for documents or identification such as a driver’s license, recent pay stubs, bank statements, car registration, or telephone bills.²² Many lenders telephone the borrower’s human resource manager or boss to verify the borrower’s employment.²³ Virtually all lenders require the names, addresses, and telephone numbers of close family and friends in the event that the borrower skips town.²⁴ Payday lenders usually decide whether to issue a loan on the spot without obtaining a credit report.²⁵ Both parties are aware that the borrower’s checking account does not have sufficient funds to cover the check when the check is signed.²⁶ The assumption is that the borrower will have deposited sufficient funds in her checking account to cover the check before the due date of the loan. After the paperwork is complete, the debtor walks away with \$200 in cash or a check drawn on the lender’s account. When the two weeks are up, the debtor can

¹⁹ Payday loans go by many other names, including deferred deposit transactions, deferred presentment check cashing, post-dated check loans, and check loans. Jean Ann Fox, *What Does It Take to Be a Loanshark in 1998? A Report on the Payday Loan Industry*, 772 PRAC. L. INST./COM. 987, 989 (1998).

²⁰ Some lenders are now replacing the use of checks with a borrower’s agreement to allow the lender to simply debit the borrower’s bank account on the due date of the loan. Michael S. Barr, *Banking the Poor*, 21 YALE J. ON REG. 121, 149 (2004).

²¹ See Scott Andrew Schaaf, Note, *From Checks to Cash: The Regulation of the Payday Lending Industry*, N.C. BANKING INST. 339, 341–42 (2001).

²² Fox, *supra* note 19, at 989.

²³ Christopher L. Peterson, *Only Until Payday: A Primer on Utah’s Growing Deferred Deposit Loan Industry*, UTAH B.J., Mar. 2002, at 16.

²⁴ *Id.*

²⁵ Fox, *supra* note 19, at 990.

²⁶ See *id.*; Deborah A. Schmedemann, *Time and Money: One State’s Regulation of Check-Based Loans*, 27 WM. MITCHELL L. REV. 973, 974–76 (2000).

redeem the check with cash or a money order, permit the check to be deposited, or attempt to renew the loan by paying another fee.²⁷ If the borrower cannot pay off the loan, the obligation continues to accrue \$35 in interest every two weeks. Although the initial \$35 fee represents only 17.5% of the loan amount, the annual percentage rate of the transaction is around 455%.

A 455% interest rate is by no means uncommon.²⁸ Studies by state governments, scholars, and consumer advocates generally indicate that average payday loan rates range from 364% to 550%. A consumer advocate coalition study surveying lenders in nineteen states and the District of Columbia found an average interest rate of 474%.²⁹ Other regional data tend to roughly confirm this figure. For instance, the Indiana Department of Financial Institutions survey found that the average Indiana payday loan interest rate was 498.75%.³⁰ North Carolina consumers purchase about 63% of their payday loans at annual interest rates between 460.08% and 805.15%.³¹ A recent report on Oklahoma payday lenders may suggest a slightly lower average APR of around 364.47% in that state.³² A report on payday lenders in Salt Lake City showed an average rate of 528.49%.³³ Still, some lenders charge rates far in excess of these averages. For example, Indiana regulators found one lender offering payday loans at an interest rate of 7600%.³⁴ Moreover, these interest rates do not include common contingent charges, including late fees and bounced check fees, which can cost nearly as much, or even more, interest as the loan itself.

Payday lenders argue that quoting an annual percentage rate for a two-week

²⁷ Fox, *supra* note 19, at 990.

²⁸ CHRISTOPHER L. PETERSON, TAMING THE SHARKS: TOWARDS A CURE FOR THE HIGH COST CREDIT MARKET 10–11 (2004).

²⁹ JEAN ANN FOX & EDMUND MIERZWINSKI, SHOW ME THE MONEY 8 (2000).

³⁰ IND. DEP'T OF FIN. INSTS., SUMMARY OF PAYDAY LENDER EXAMINATION (July–Sept. 1999), <http://www.in.gov/dfi/legal/paydaylend/Payday.pdf> [hereinafter IND. DEP'T OF FIN. INSTS.].

³¹ OFFICE OF THE COMM'R OF BANKS, REPORT TO THE GENERAL ASSEMBLY ON PAYDAY LENDING, Feb. 22, 2001, at 3 (N.C. Feb. 22, 2001).

³² A survey of payday loans registered in a database required under Oklahoma law suggested an average payday loan principal of \$307.59 with an average fee of \$43. OKLAHOMA TRENDS IN DEFERRED DEPOSIT LENDING: OKLAHOMA DEFERRED DEPOSIT PROGRAM 4 (Dec. 2004), http://www.veritecs.com/OK_trends_12_2004.pdf [hereinafter OKLAHOMA TRENDS]. Assuming a fourteen-day repayment period, these figures suggest an APR of 364%.

³³ Christopher L. Peterson, Note, *Failed Markets, Failing Government, or Both? Learning from the Unintended Consequences of Utah Consumer Credit Law on Vulnerable Debtors*, 2001 UTAH L. REV. 543, 563.

³⁴ IND. DEP'T OF FIN. INSTS., *supra* note 30, at 1.

loan is misleading and unhelpful.³⁵ Instead, payday lenders prefer to quote loan prices as a percent of the principal borrowed.³⁶ For instance, if the consumer borrows \$300 for two weeks in exchange for a fee of \$52.50, lenders will often describe this as a "17.5%" loan. Lenders suggest payday loans compare favorably to bounced check fees, which average around \$21.³⁷ Critics of payday lending retort that a bounced check fee is a one-time charge that does not continue to compound again and again.³⁸ For loans, annualized interest rates are the uniform metric which all mainstream creditors use to compare prices. Home mortgages, student loans, and automobile loans are all disclosed and regulated with an annual percentage rate terminology. Even other short-term lenders, such as credit card issuers, use annual percentage rates. Consumers wishing to compare the price of available credit options tend to be confused and surprised by different price quoting conventions for different types of credit. To those with limited financial literacy, or even to casual observers, a cash advance or purchase on a 17.5% APR credit card may be indistinguishable from a payday loan with 17.5%-of-principal fee. Most payday loan borrowers will be surprised to know that the interest rate of the latter loan is about *26 times more expensive* than that of the former. Not surprisingly, one industry-sponsored telephone survey found that 72% of payday loan borrowers said they did not know the annual percentage rate of their most recent loan.³⁹ More than half of the small minority who claimed to know their annual percentage rate incorrectly believed that their rate was far lower than it actually was.⁴⁰

Annual percentage rate terminology is also appropriate for payday loans because these loans often compound for durations coming close to or exceeding a year. For any given loan, many payday loan borrowers simply lack the funds to pay on the due date and are accordingly forced to roll over the loan.⁴¹

³⁵ See *Stay Away from Payday Lenders: There are Few, If Any, Sensible Reasons to Use a Payday Lender*, WIS. STATE J., Nov. 10, 2002, at B3.

³⁶ Professor Johnson's study of Ohio payday lending found that lenders systematically obscure their annual percentage rates by leaving them out of advertisements and refusing to provide Truth in Lending disclosures until after loan consummation. See Creola Johnson, *Payday Loans: Shrewd Business or Predatory Lending?*, 87 MINN. L. REV. 1, 38-41, 44 (2002).

³⁷ BD. OF GOVERNORS OF THE FED. RESERVE SYS., ANNUAL REPORT TO THE CONGRESS ON RETAIL FEES AND SERVICES OF DEPOSITORY INSTITUTIONS 5 (June 2002).

³⁸ See John Hackett, *Ethically Tainted*, U.S. BANKER, Nov. 2001, at 48, 50.

³⁹ JOHN P. CASKEY, THE ECONOMICS OF PAYDAY LENDING 3 (2002) (citing GREGORY ELLIEHAUSEN & EDWARD C. LAWRENCE, PAYDAY ADVANCE CREDIT IN AMERICA: AN ANALYSIS OF CUSTOMER DEMAND 54-55 (2001)).

⁴⁰ *Id.*

⁴¹ Barr, *supra* note 20, at 156. Some lenders and borrowers use "same day advances" where "[t]he borrower pays the loan in full, but that same day takes out another payday loan in an amount equivalent to the balance paid earlier." *Id.*

Compelling evidence suggests that a substantial portion of the payday loan market is made up of extensions of previous loans, sometimes for protracted durations. North Carolina regulators found that about 87% of borrowers would roll over any given loan at least one time with any given lender.⁴² Not counting debtors who borrowed from multiple locations, nearly 40% of North Carolina borrowers renewed their payday loans more than ten times.⁴³ The Indiana Department of Financial Institutions study found that 77% of all payday transactions were extensions of previous loans.⁴⁴ In Oklahoma, the average payday loan customer took out 4.3 payday loans during a four-month period from August 2004 to November 2004—just over one per month.⁴⁵ Consumer advocates have found that the average payday loan customer borrows 10.19 payday loans per year.⁴⁶ In Iowa, the Division of Banking found an average of 12.5 loans per year per customer.⁴⁷ An industry-sponsored study found that 30% of borrowers had seven or more loans in a year, and that about 75% of borrowers rolled over their loan at least one time.⁴⁸ Regulators in Illinois found payday loan borrowers “who were borrowing continuously for over a year on their original loan.”⁴⁹ An empirical study by Professor Creola Johnson found that payday lenders repeatedly roll over payday loans even in states with statutes prohibiting this practice.⁵⁰ Moreover, there are frequent reports of loans outstanding for one, two, or even three years.⁵¹ Collectively these statistics have led consumer advocates to argue that payday loans trap borrowers into a cycle of “chain debt.”⁵²

⁴² OFFICE OF THE COMM’R OF BANKS, *supra* note 31, at 6.

⁴³ *Id.*

⁴⁴ IND. DEP’T OF FIN. INSTS., *supra* note 30, at 3.

⁴⁵ OKLAHOMA TRENDS, *supra* note 32, at 9.

⁴⁶ FOX & MIERZWINSKI, *supra* note 29, at 8.

⁴⁷ Kathleen E. Keest, *Stone Soup: Exploring the Boundaries Between Subprime Lending and Predatory Lending*, in CONSUMER FINANCIAL SERVICES LITIGATION 2001 at 1107, 1114 (Practicing Law Institute Corporate Law and Practice Course Handbook Series B-1241, 2001) (citing IOWA DIVISION OF BANKING, SURVEY (Dec. 2000)).

⁴⁸ ELLIEHAUSEN & LAWRENCE, *supra* note 39, at 54–55. This study likely understates the duration of payday loans because it relies on a sample of more affluent payday borrowers, only surveys borrowers willing to discuss their loans, and did not reach borrowers who had their telephone service disconnected.

⁴⁹ ILL. DEP’T OF FIN. INSTS., SHORT TERM LENDING: FINAL REPORT 30 (1999), <http://www.state.il.us/dfi/ccd/pdfs/Shortterm.pdf>.

⁵⁰ Johnson, *supra* note 36, at 32–33.

⁵¹ See Peterson, *supra* note 33, at 569 n.167 (payday loan store cashier stating loans accrue interest for “two or three years” in state with twelve-week limit on rollover duration); FOX & MIERZWINSKI, *supra* note 29, at 8 (loan renewed 66 times for two and a half years).

⁵² See, e.g., Barr, *supra* note 20, at 149; Johnson, *supra* note 36, at 6–7.

Payday lenders argue that the high prices and long durations of their loans are justified by the high administrative costs of doing business and by the high default rates.⁵³ Scholars have countered that high payday loan prices actually “mutually reinforce” loan losses because the high prices induce default, which in turn raises prices.⁵⁴ Moreover, even if payday loan loss rates justify higher pricing, the payday lending business has still proven wildly profitable. A Federal Deposit Insurance Agency official wrote that, despite credit and reputational risks, “higher pricing on payday loans promises higher revenues and wider margins for lenders.”⁵⁵ One economics professor has estimated that payday lending operations “earn ten to twenty times higher ‘return on equity’ than traditional banks.”⁵⁶ Similarly, after the Tennessee Legislature took steps to legalize payday lending, the Tennessee Department of Financial Institutions conducted a follow-up survey, finding that licensed payday lenders “earned over [30%] return on investment in the first nine months of legal operation.”⁵⁷ But perhaps most interesting is that payday lender profits come disproportionately from high-frequency borrowers. Peter Skillern’s study of the North Carolina market found that 85% of payday lender revenue in that state comes from borrowers receiving five or more payday loans in a year.⁵⁸

Critics of the payday lenders have also complained of a culture of disregard for the rule of law in the industry. For example, in 713 payday lender inspections conducted over a three-year period, North Carolina banking officials found 8911 violations of simple state consumer-protection rules.⁵⁹ Payday lenders in many states refuse to obtain licenses required by state law.⁶⁰ Over a thousand payday lenders in Texas openly ignore state interest rate limitations.⁶¹ Creola Johnson’s

⁵³ See Marcus Franklin, *Payday Loans Role Debated at Forum*, DAYTON DAILY NEWS, Nov. 9, 1999, at 1B.

⁵⁴ Barr, *supra* note 20, at 155 n.148; see also Joseph E. Stiglitz & Andrew Weiss, *Credit Rationing in Markets with Imperfect Information*, 71 AM. ECON. REV. 393 (1981).

⁵⁵ Barbara A. Monheit, *Consumer Financial Services Litigation: The Regulators Speak*, 1361 PRACTICING LAW INSTITUTE: CORPORATE LAW AND PRACTICE COURSE HANDBOOK SERIES 459, 503 (March-May 2003) (PLI Order No. B0-01TA).

⁵⁶ Mike Hudson, *Going for the Broke: How the ‘Fringe Banking’ Boom Cashes in on the Poor*, WASH. POST, Jan. 10, 1993, at C4.

⁵⁷ FOX & MIERZWINSKI, *supra* note 29, at 8.

⁵⁸ PETER SKILLERN, CMTY. REINVESTMENT ASS’N OF N.C., *SMALL LOANS, BIG BUCK\$: AN ANALYSIS OF THE PAYDAY LENDING INDUSTRY IN NORTH CAROLINA* 4 (2002), http://www.cra-nc.org/small_loans_big_bucks.pdf.

⁵⁹ OFFICE OF THE COMM’R OF BANKS, *supra* note 31, at 2.

⁶⁰ There are widespread reports of unlicensed payday lenders in many states, including California, Florida, and North Carolina. See *infra* notes 84, 106, and 130 and accompanying text.

⁶¹ JEAN ANN FOX, CONSUMER FEDERATION OF AMERICA, *UNSAFE AND UNSOUND: PAYDAY LENDERS HIDE BEHIND FDIC BANK CHARTERS TO PEDDLE USURY* 13 (Mar. 30,

study of Ohio payday lenders found that payday lenders in that state systematically provided false and misleading information on loan contract terms, illegally advertised the cost of credit without using annual percentage rate terminology, and allowed “consumers to roll over payday loans in violation of state law.”⁶² And there are widespread reports that many payday lenders use false but intimidating threats of criminal prosecution under “bad check” laws.⁶³ Needless to say, criminal prosecution has not been a remedy available to traditional creditors since debtors prisons were outlawed after the Civil War.⁶⁴

2. Payday Lending in History: Ancient Lineage and Recent Resurgence

Payday loans are only one recent incarnation of a consumer financial product dating back to our earliest recorded civilizations. While it is true that the use of a negotiable instrument (or an agreement to allow an electronic debit) as a form of collateral is a relatively recent innovation amongst consumer borrowers, pledging to pay one’s earnings in the immediate future in exchange for money today is ancient. High-cost loans with contractual terms similar to payday loans have existed for thousands of years. Even before governments learned to coin currency, records of ancient Mesopotamian and Mediterranean civilizations amply document high-cost consumer loans payable in grain, animals, or metal.⁶⁵ Just as today’s debtors collect wages and borrow money using checks, ancient peasants, who earned a living raising grains and animals, repaid their high-cost debts in kind.⁶⁶ While today’s borrowers wonder whether they will have sufficient funds in their accounts to cover a check post-dated two weeks in advance, ancient debtors “dreaded ‘the end of the moon’” when their high-cost loans came due.⁶⁷ And, like today’s high-cost debtors, ancient borrowers signed short-term loans intending to repay quickly, but in fact found themselves committed to loans that “often compounded over long periods.”⁶⁸ “Because

2004), <http://www.consumerfed.org/pdfs/pdlrentabankreport.pdf>.

⁶² Johnson, *supra* note 36, at 32–33.

⁶³ In only one year, payday lenders filed 13,000 criminal charges against their customers in one Dallas precinct. 146 CONG. REC. S178 (daily ed. Feb. 1, 2000) (statement of Sen. Lieberman). *See also* Fox & MIERZWINSKI, *supra* note 29, at 10 (discussing threats of criminal prosecution in Ohio).

⁶⁴ Christopher L. Peterson, *Truth, Understanding, and High-Cost Consumer Credit: The Historical Context of the Truth in Lending Act*, 55 FLA. L. REV. 807, 846 (2003).

⁶⁵ *See* SIDNEY HOMER & RICHARD SYLLA, A HISTORY OF INTEREST RATES 25–31 (3d rev. ed. 1996).

⁶⁶ *Id.*

⁶⁷ *Id.* at 35.

⁶⁸ *Id.* at 40.

[high-cost] creditors lent to those in desperate need of food or shelter, the relative bargaining position of debtors often placed them at a significant disadvantage.”⁶⁹ One commentator explained the earliest credit markets thus: “Human nature being what it is . . . [t]he rich extracted hard bargains and grew richer; the poor fell into perpetual debt and forfeited their meager possessions.”⁷⁰ It is an open question whether this comment is less applicable today.

There is also significant historical evidence dating back thousands of years of predatory loans harming military personnel and their families. While a comprehensive discussion of this history is beyond the scope of our Article, a few short examples are illustrative. First, the Roman Republic was forced to address abusive high-cost lending to military personnel prior to its rise to a preeminent power in the ancient Mediterranean.⁷¹ In the fifth century B.C.E., Romans were only one of several ethnic groups present in Italy, and they were still far away from assuming their later historical importance.⁷² In 494 B.C.E., a violent civil revolt took place.⁷³ A large number of poor plebeians withdrew from the city and gathered on a hill overlooking the Tiber River, where they preceded to elect their own shadow legislature, officials, and tribunes, essentially seceding from the Roman Republic.⁷⁴ The revolt, called the First Secession, threatened to rip apart the emerging Roman nation.⁷⁵ Interestingly, “[b]y all accounts the principal cause of the First Secession was a debt crisis.”⁷⁶

Many historians, both modern and ancient, have focused on one story which may have lit the fire.⁷⁷ Apparently, a war veteran’s farm was destroyed during a battle with a rival tribe.⁷⁸ The loss of his farm, combined with government tax demands, forced the veteran to borrow money at dangerously high rates.⁷⁹ When

⁶⁹ Peterson, *supra* note 64, at 809.

⁷⁰ James M. Ackerman, *Interest Rates and the Law: A History of Usury*, 1981 ARIZ. ST. L.J. 61, 63.

⁷¹ See KARL CHRIST, *THE ROMANS: AN INTRODUCTION TO THEIR HISTORY AND CIVILISATION* 13 (Christopher Holme trans., University of California Press, 1984); STEPHEN L. DYSON, *COMMUNITY AND SOCIETY IN ROMAN ITALY* 78 (1992).

⁷² See MICHAEL CRAWFORD, *THE ROMAN REPUBLIC* 31–42 (2d ed. 1993) (relating a brief history of the Roman conquest of Italy); CHESTER G. STARR, JR., *THE EMERGENCE OF ROME AS RULER OF THE WESTERN WORLD* 7–13, 16 (1953).

⁷³ T.J. CORNELL, *THE BEGINNINGS OF ROME: ITALY AND ROME FROM THE BRONZE AGE TO THE PUNIC WARS* (c. 1000–264 B.C.) 256–57 (1995).

⁷⁴ *Id.*

⁷⁵ *Id.* at 13.

⁷⁶ CORNELL, *supra* note 73, at 266.

⁷⁷ See, e.g., F.R. COWELL, *THE REVOLUTIONS OF ANCIENT ROME* 31, 39–40 (1962).

⁷⁸ *Id.* at 40 (quoting 1 TITUS LIVIUS, *THE HISTORY OF ROME* Book 2, Part 2.3 (Ernest Rhys ed., Rev. Canon Roberts trans., J.M. Dent & Sons, Ltd., London 1905)).

⁷⁹ *Id.*

he was unable to pay, his creditor imprisoned and tortured him.⁸⁰ Eventually, the veteran appeared in the city forum where those who heard his story were so enraged they took to the streets rioting.⁸¹ The first major codification of Roman law, called the Twelve Tables, was in part a response to the debt crisis of the First Secession.⁸² The Twelve Tables included Rome's first usury law and some basic provisions to enforce it.⁸³ Eventually settling on a 12% percent interest rate cap, Rome rose to power under a legal regime which clearly outlawed today's payday loans.⁸⁴ This 12% interest rate cap remained the legal limit for centuries and was eventually adopted by both the later Empire and the Byzantine Empire in Constantinople.⁸⁵

Predatory lending to military personnel has not been limited to Western cultures. For example, historical sources link the decline of the Ming dynasty in China to debt-related peasant riots sparked by predatory lending to soldiers. During the Ming dynasty, China was home to a large and thriving industry of creditors that loaned money to the working poor at high interest rates. Records suggest that in 1587, over 20,000 pawn shops operated across China.⁸⁶ Similarly, businesses owned by wealthy families with links to imperial authority often took high-priced mortgages on the homes and land of poor farmers.⁸⁷ When subsistence farmers fell behind on payments, creditors relied on local "roughnecks" to collect.⁸⁸ In the late Ming dynasty, these contracts dispossessed a substantial portion of the population and helped cement a wide gap between the

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² STARR, *supra* note 72, at 23.

⁸³ HOMER & SYLLA, *supra* note 65, at 45–47 (establishing an 8.33% cap, which was later amended to 12%).

⁸⁴ Historians suggest that even illegal extortionate lenders in ancient Rome charged interest rates hundreds of points lower than today's average payday loans. COWELL, *supra* note 77, at 31.

There was at first no limit to the interest that might be demanded on loans, so those in desperate want were forced to accept any terms. Moneylenders in ancient times were notorious for their harsh, grasping greed and, left uncontrolled as they were, they demanded thirty, fifty, a hundred percent interest and more.

Id.

⁸⁵ HOMER & SYLLA, *supra* note 65, at 47–49.

⁸⁶ RAY HUANG, 1587: A YEAR OF NO SIGNIFICANCE: THE MING DYNASTY IN DECLINE 144 (1981).

⁸⁷ *Id.* at 145 ("Essentially, such exploitation was the economic basis of the bureaucracy as an institution. Official families, who collected rents from landholdings and interest from the moneylending business, were an integral part of the rural economy.").

⁸⁸ *Id.* at 138.

rich and poor.⁸⁹

Some historians believe these financial conditions weakened China, inviting invasion by hostile neighbors. The Ming dynasty ended after a series of peasant rebellions paved the way for Manchurian invaders from the North.⁹⁰ An ancient Chinese historian attributes predatory loans to Chinese military personnel as the trigger of these riots—bearing a remarkable similarity to Roman history. Apparently the incident involved a predatory lender who named himself “Ch’ien,” which is the Chinese word for money.⁹¹ Surprising soldiers with deceptively high rates, Ch’ien demanded repayment far in excess of the principal originally borrowed.⁹² This lender, and presumably others, managed to enforce his loans by sharing the profits with officials, including a garrison commander.⁹³ Eventually, soldiers became so outraged that they mutinied and organized local peasants suffering from crushing poverty to join them.⁹⁴ Unlike Rome, which successfully reformed its laws, the Ming dynasty was too slow to react and eventually faltered.

Historians have recorded similar incidents in American history as well. In the nineteenth century, as the United States began expanding westward, military personnel were often posted in remote frontier garrisons.⁹⁵ Similarly, during the Civil War, Union soldiers faced long and disrupted supply lines.⁹⁶ These conditions meant that soldiers often had insufficient food and clothing and also received their wages at irregular intervals.⁹⁷ A particular type of merchant followed Union Army units, setting up operations on the outskirts of each camp or garrison.⁹⁸ Sometimes called “sutlers,” these merchants came to specialize in

⁸⁹ *Id.* at 145 (“Agrarian exploitation of the poor . . . was far from limited to . . . isolated incidents. It affected all walks of life and was carried out on a large and small scale without surcease generation after generation.”).

⁹⁰ JAMES BUNYAN PARSONS, *THE PEASANT REBELLIONS OF THE LATE MING DYNASTY* xiii, xv (1970); F.W. MOTE, *IMPERIAL CHINA, 900–1800*, at 795–96 (1999).

⁹¹ Of course today’s payday lenders take similar names, such as Check into Cash, Ca\$h Now, and ACE Cash Express.

⁹² PARSONS, *supra* note 90, at 5 n.* (discussing CHI LIU-CH’I, *MING CHI PEI LUEH* 4/11a-b).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ See *BEYOND THE BATTLEFIELD: THE ORDINARY LIFE AND EXTRAORDINARY TIMES OF THE CIVIL WAR SOLDIER* 150, 152–55 (David Madden ed., 2000) [hereinafter *BEYOND THE BATTLEFIELD*].

⁹⁶ *Id.* at 152–55.

⁹⁷ *Id.*

⁹⁸ ROBERT WOOSTER, *SOLDIERS, SUTLERS, AND SETTLERS: GARRISON LIFE ON THE TEXAS FRONTIER* 77 (1987).

providing goods and services to struggling soldiers.⁹⁹ Many sutlers lent cash, but they also supplied food, clothing, boots, gloves, medication, tobacco, and alcohol on credit.¹⁰⁰ Some sutlers refused to advance funds or provide change in currency, instead giving cardboard tickets redeemable exclusively at the sutler's own store.¹⁰¹ This forced hungry and cold soldiers to trade away the liquidity of their wages. With their wages converted into sutler's tickets, soldiers could not force price competition with other sutlers, nor could they shop with traditional merchants when the opportunity arose.¹⁰² While sutlers did take risks, many got rich by charging outrageous prices and interest rates to soldiers who made steady wages and had few options.¹⁰³ Some sutlers gave "presents" to officers who then looked the other way.¹⁰⁴

Recognizing its own limitations in meeting soldiers' needs, the Army tolerated sutlers, allowing up to one sutler for each regiment.¹⁰⁵ Rank and file soldiers, however, often despised their creditors; they "did not appreciate the 'risks' taken by men who were getting rich at their disadvantage, who did not conform to military rules, and who were exposed to enemy fire only by accident, and they accused the sutlers of price-gouging and profiteering."¹⁰⁶ While the practices associated with Civil War era sutlers varied from unit to unit, their situation repeatedly led enraged soldiers to rise up and rampage through their own camps.¹⁰⁷ Many units took matters into their own hands, chasing their sutler lenders out of camp with all-too-real death threats.¹⁰⁸

The immediate commercial precursor to today's payday lenders developed in large eastern U.S. cities during this same period of time: the mid-nineteenth century. A type of lender commonly referred to as a "salary lender" emerged by serving a clientele typically composed of employees of large government and industrial institutions, including "civil servants, railroad workers, streetcar

⁹⁹ DAVID MICHAEL DELO, *PEDDLERS AND POST TRADERS: THE ARMY SUTLER ON THE FRONTIER* 50–52 (1992).

¹⁰⁰ *BEYOND THE BATTLEFIELD*, *supra* note 95, at 151.

¹⁰¹ See generally KENNETH KELLER, *SUTLER PAPER MONEY* (1994) (cataloging sutler scrip as collectible memorabilia); DAVID E. SCHENKMAN, *CIVIL WAR SUTLER TOKENS AND CARDBOARD SCRIP* (1983) (same).

¹⁰² DELO, *supra* note 99, at 131–32.

¹⁰³ *BEYOND THE BATTLEFIELD*, *supra* note 95, at 151–52.

¹⁰⁴ DELO, *supra* note 99, at 132.

¹⁰⁵ *BEYOND THE BATTLEFIELD*, *supra* note 95, at 151–52.

¹⁰⁶ *Id.* at 151–52.

¹⁰⁷ *Id.* at 152 ("Repeatedly, sutlers were subjected to reprisals. Rampaging troops would pillage their supply tents, sometimes stealing, sometimes simply destroying . . .").

¹⁰⁸ *Id.* ("[O]ften a sutler would be chased out of a camp at the risk of his life should he return.").

motormen, and clerks in firms such as insurance companies.”¹⁰⁹ Such workers, often recent immigrants or former agricultural laborers, formed the foundation of the emerging lower middle class of urban American society.¹¹⁰ These people usually borrowed to meet unexpected needs, such as family illness or moving expenses.¹¹¹ Nevertheless, they held steady jobs and had family obligations which prevented them from simply skipping town.¹¹² Salary lenders targeted these workers because their steady supply of disposable income made them likely to repay, and their frequent minor income shocks made them likely to borrow.¹¹³

It was these salary lenders whom working class people in the eastern United States first came to describe as “loan sharks.”¹¹⁴ Although the term was new, the contractual terms and collection tactics of the lenders were reminiscent of the high-cost wage-based lending common in previous centuries. In a typical transaction, a debtor would borrow five dollars and repay six within the next week or so.¹¹⁵ Very similar to today’s payday loans, the charge of 20% of the loan principal amounted to around 520% per annum, assuming a two-week maturation period.¹¹⁶ The charge of one or two dollars itself seemed fairly innocuous for any one given week. But, when a debtor lost a job, was not paid for his work, became ill, had a family member become ill, or was prevented from paying for any other reason, the simple transaction rapidly swelled into a sizeable drain on an already strained budget. Thus, late nineteenth and early twentieth century salary loans often ended up compounding over lengthy periods of time.¹¹⁷ Newspapers of the day frequently gave anecdotal accounts of debtors trapped by their salary loans, such as “the employee of a New York publishing house who supported a large family on a salary of \$22.50 per week and had been paying \$5 per week to a salary lender for several years, until he had paid more

¹⁰⁹ Mark H. Haller & John V. Alviti, *Loansharking in American Cities: Historical Analysis of a Marginal Enterprise*, 21 AM. J. LEGAL HIST. 125, 128 (1977).

¹¹⁰ *Id.* at 127, 129.

¹¹¹ *Id.* at 128.

¹¹² *Id.* at 128–29.

¹¹³ Ackerman, *supra* note 70, at 89–90; Robert W. Kelso, *Social and Economic Background of the Small Loan Problem*, 8 LAW & CONTEMP. PROBS. 14, 15–20 (1941).

¹¹⁴ Haller & Alviti, *supra* note 109, at 125–26. Thus, today’s payday lenders are loansharks in the most historically correct sense of the term. Contrary to Hollywood imagery, the term “loanshark” did not come to describe the mafia until at least the 1930s. PETERSON, *supra* note 28, at 10.

¹¹⁵ HOMER & SYLLA, *supra* note 65, at 428.

¹¹⁶ *Id.* There were, of course, variations in loan terms. Many lenders used one-week balloon payments. *Id.* Also, often lenders charged African Americans rates twice as high in the same type of transaction, where a loan of five dollars was repaid with seven at the end of the week. *Id.*

¹¹⁷ Haller & Alviti, *supra* note 109, at 133.

than ten times the original loan.”¹¹⁸ Similarly, a Chicago consumer borrowed \$15, but “ten years later [he] had repaid \$2,153 and still owed the original \$15.”¹¹⁹ More compelling were the records of one salary lender in New York City, which showed that out of approximately 400 debtors, 163 had been making payments on the loans for over two years.¹²⁰

Late nineteenth and early twentieth century salary lenders charged interest rates far in excess of state usury laws. A far cry from contemporary American attitudes about credit, early American culture strongly condemned borrowing money for personal purposes. Early colonial leaders, including the founding fathers of the U.S. Constitution, believed borrowing was a moral vice.¹²¹ Accordingly, these leaders adopted interest rate caps, called general usury laws, which limited annual interest rates to around six percent.¹²² With a few exceptions, these interest rate caps remained intact into the twentieth century.¹²³ Nevertheless, salary lenders in eastern U.S. cities managed to conduct business through a variety of thinly veiled disguises and sham transactions.¹²⁴ For instance, many lenders justified ignoring the interest rate cap by phrasing the contract as a purchase or assignment of future wages, rather than as a loan.¹²⁵ Other lenders would manipulate the legal “time-price doctrine” to avoid interest rate caps.¹²⁶ Under English law, when a buyer purchased a physical good over time through installments, it was not considered a loan for purposes of a statutory interest rate cap.¹²⁷ This led some lenders to avoid interest rate caps by, for example, requiring the debtor to “purchase” a worthless oil painting at the time the loan contract was signed.¹²⁸ The debtor would owe the same amount of

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 134.

¹²⁰ *Id.* at 133.

¹²¹ HOMER & SYLLA, *supra* note 65, at 274.

¹²² KATHLEEN E. KEEST & ELIZABETH RENUART, NATIONAL CONSUMER LAW CENTER, *THE COST OF CREDIT: REGULATION AND LEGAL CHALLENGES* 37 (2d ed. 2000); Ackerman, *supra* note 70, at 85; Tracy A. Westen, *Usury in the Conflict of Laws: The Doctrine of the Lex Debitoris*, 55 CAL. L. REV. 123, 131 n.45 (1967). Most of these statutes were roughly modeled on the English Statute of Anne. See Laurence M. Katz, Comment, *Usury Laws and the Corporate Exception*, 23 MD. L. REV. 51, 52 n.11 (1962).

¹²³ KEEST & RENUART, *supra* note 122, at 37.

¹²⁴ Peterson, *supra* note 69, at 852–54 (providing a more thorough discussion of salary lender evasion of state usury law).

¹²⁵ LENDOL CALDER, *FINANCING THE AMERICAN DREAM: A CULTURAL HISTORY OF CONSUMER CREDIT* 50 (1999); DAVID J. GALLERT ET AL., *SMALL LOAN LEGISLATION: A HISTORY OF THE REGULATION OF THE BUSINESS OF LENDING SMALL SUMS* 180 (1932).

¹²⁶ KEEST & RENUART, *supra* note 122, at 38.

¹²⁷ *Id.* at 37–38.

¹²⁸ CALDER, *supra* note 125, at 50.

money, and could immediately throw the painting away, but the transaction would be at least superficially legal.¹²⁹

Beginning in the 1910s and 1920s, a widespread movement aimed at cracking down on the salary lending industry, now often called the "loan shark problem," developed. Nonprofit organizations, often backed by the fortunes of deceased captains of industry, attacked salary lenders through legal advocacy and by providing low-cost charitable alternatives to salary loans.¹³⁰ The media began exposing and editorializing against salary lenders, creating pressure for reform. Appellate courts began handing down stinging rebukes of salary lenders and developing common law language exhorting trial judges to ignore salary lender subterfuges that concealed illegal interest rates.¹³¹ State legislatures began amending their general usury laws to raise interest rate caps in order to attract legal private capital to the markets for consumer loans.¹³² These "special usury laws," commonly called small loan laws, allowed lenders—who would agree to licensing, bookkeeping, security interest, and collection practice rules—to lend small amounts at between 36% and 42% per year.¹³³ The hope was that, with these new interest rate caps, honest, respectable private lenders would flow into the market for costly consumer loans, creating healthy competition and driving the salary lenders out of business.¹³⁴ And finally, large industry accepted these reforms because they themselves wanted to begin lending to consumers at moderate prices which nevertheless exceeded the low colonial-era general usury laws. Collectively, these forces significantly curtailed salary lending throughout the United States for most of the twentieth century.

Economic forces and legal changes in the 1970s and 1980s began to lay a foundation for a resurgence in salary lending, however. Unprecedented inflation forced the Federal Reserve Board to adopt monetary policy resulting in high long-term commercial interest rates. The high cost of funds made it difficult for banks, credit unions, and other mainstream lenders to loan money within state interest rate caps. It became fashionable for neoclassical economists and legal and economics scholars to goad leaders into abandoning usury laws. State legislatures were increasingly making a habit of granting special permission to lenders to charge higher and higher interest rates. Retail installment stores, pawnshops, and rent-to-own furnishing stores all successfully lobbied for special treatment. Many state legislatures also raised, or even eliminated, their interest

¹²⁹ See, e.g., *id.*

¹³⁰ KEEST & RENUART, *supra* note 122, at 38.

¹³¹ See, e.g., *In re Home Disc. Co.*, 147 F. 538, 546 (N.D. Ala. 1906) (characterizing salary lenders as having "brought on conditions which were yearly reducing hundreds of laborers and other small wage earners to a condition of serfdom in all but name").

¹³² KEEST & RENUART, *supra* note 122, at 39.

¹³³ GALLERT, *supra* note 125, at 89; KEEST & RENUART, *supra* note 122, at 48.

¹³⁴ See KEEST & RENUART, *supra* note 122, at 48.

rate caps.¹³⁵ Moreover, the Supreme Court's decision in *Marquette National Bank v. First of Omaha Service Corp.*,¹³⁶ which is discussed in greater detail in the next Part, encouraged these trends.

At the beginning of the 1990s, the best available estimate suggests that fewer than 200 business locations nationwide offered payday loans—loans that were clearly a throw-back to the old salary lending business mostly stamped out 50 or so years before.¹³⁷ Businesses offering payday loans at this point were usually focused primarily on cashing paychecks for consumers who lacked traditional banking services. These businesses found that they could attract larger clientele and make staggering profits by agreeing to “cash” consumers’ post-dated personal checks. If a consumer needed a loan, she could write a check for funds she did not actually have in her checking account.¹³⁸ If the “check casher” agreed to wait two weeks before attempting to tender the check, then the consumer would have time to make some more money, deposit additional funds in her checking account, and thus cover the check by the agreed-upon date.¹³⁹ The term “payday loan” derived from this practice because often the date consumers wrote on their checks corresponded to their next payday. When sued by consumers alleging usury violations, these check cashers maintained that they were not lending money, but were simply cashing a check.¹⁴⁰

Current payday lenders make similar arguments. Some payday lenders claim to be “leasing” money to the consumer, rather than making a loan.¹⁴¹ In these sale-leaseback transactions, the consumer “sells” a household appliance to the business, which then “leases” it back for a fee until the consumer can repurchase it. “The appliance, however, is never actually delivered to the lender. Instead, the lender gives the consumer cash and takes only a post-dated check from the consumer as security.”¹⁴² Other payday lenders disguise their loans as “catalog sales.”¹⁴³ Similar to the worthless oil painting dodge of a century ago, these lenders require that the consumer buy certificates, which they can redeem for merchandise from a catalog. The consumer writes a check and in return obtains cash and some certificates redeemable for merchandise from a catalog on

¹³⁵ *Id.* at 55.

¹³⁶ *Marquette Nat'l Bank v. First of Omaha Serv. Corp.*, 439 U.S. 299 (1978).

¹³⁷ JOHN P. CASKEY, *THE ECONOMICS OF PAYDAY LENDING* 3 (2002).

¹³⁸ Johnson, *supra* note 36, at 12–13.

¹³⁹ *Id.*

¹⁴⁰ See Schmedemann, *supra* note 26, at 978.

¹⁴¹ Jeff Gelles, *Payday Loans Will Just Make It Worse*, PHILADELPHIA INQUIRER, Nov. 21, 2001, at C01.

¹⁴² Johnson, *supra* note 36, at 18–19.

¹⁴³ *People v. JAG NY, LLC*, 794 N.Y.S.2d 488, 489 (N.Y. app. Div. 2005) (describing the loans as “sales of gift certificates for catalog merchandise”).

display.¹⁴⁴ While the borrower may never redeem the catalog certificates, the real point of the transaction is that the lender waits about two weeks before tendering the borrower's check. Oblivious to the recurring patterns from disguised salary loans of a century earlier, some courts have gone along with these charades.¹⁴⁵ The Federal Reserve Board, however, has been relatively quick to recognize the fees associated with these transactions for what they are: a finance charge subject to disclosure as interest under the Truth in Lending Act.¹⁴⁶

Still, with state courts and regulatory authorities slow to act, and with enormous profits to be had, the payday lending business exploded in the late 1990s. In North Carolina, payday lending outlets roughly quadrupled in four years, growing from 307 in 1997 to 1204 in 2000.¹⁴⁷ Payday lending outlets quintupled in Salt Lake City between 1994 and 2000.¹⁴⁸ Wyoming payday lenders almost tripled between 1996 and 1997.¹⁴⁹ Iowa's payday lenders increased from eight to 64 in two years.¹⁵⁰ In states where payday lending was once illegal under state law, bills purporting to regulate the industry have in fact legitimized it, leading to astonishing growth nearly overnight. For instance, after Mississippi began regulating payday lenders in 1998, the number of outlets in that state quickly tripled.¹⁵¹ Some lenders, such as QC Holdings, Inc., have proven so profitable that they have filed with the SEC and are now publicly traded corporations.¹⁵² As of 2001, over 12,000 payday loan outlets were

¹⁴⁴ *Id.*

¹⁴⁵ *See, e.g.,* Betts v. ACE Cash Express, Inc., 827 So. 2d 294, 297 (Fla. Dist. Ct. App. 2002). Some state legislatures have attempted to prevent these disguised payday loans by statute. *See, e.g.,* ALA. CODE § 5-18A-12(d) (2004) ("No person shall use any device, subterfuge, or pretense whatsoever, including, but not limited to, catalog sales, discount vouchers, Internet instant-rebate programs, phone card clubs, or any agreement, including agreements with affiliated persons, with the intent to obtain greater charges than would otherwise be authorized by this chapter.").

¹⁴⁶ Truth in Lending Act, 15 U.S.C. § 1601 (2000), *discussed in* Official Staff Commentary § 226.2(a)(14)-2, *as published in* 65 Fed. Reg. 17,129 (Mar. 31, 2000).

¹⁴⁷ OFFICE OF THE COMM'R OF BANKS, *supra* note 31, at 5.

¹⁴⁸ Peterson, *supra* note 33, at 560-61.

¹⁴⁹ CONSUMER FEDERATION OF AMERICA, THE GROWTH OF LEGAL LOAN SHARKING: A REPORT ON THE PAYDAY LOAN INDUSTRY 3 (Nov. 1998), http://www.consumerfed.org/The_Growth_of_Legal_Loan_Sharking_1998.pdf.

¹⁵⁰ *Id.*

¹⁵¹ Jimmie E. Gates, *Check-Cashing Businesses Rolling out the Dough*, CLARION-LEDGER (Jackson, Miss.), Feb. 6, 2005, *available at* <http://www.clarionledger.com/apps/pbcs.dll/article?AID=/20050206/NEWS01/502060399/1002/NEWS01>.

¹⁵² *See* Stephen Roth, *Payday Loan Firm Seeks Cash on Wall Street*, BUS. J. (Kansas City, Mo.), June 18, 2004, <http://www.bizjournals.com/kansascity/stories/2004/06/21/story5.html>.

operating nationwide, with the industry continuing to expand rapidly.¹⁵³ Attempting to put this fundamental shift in the financial services industry into perspective, the U.S. Comptroller of the Currency famously remarked that "California alone has more payday loan offices—nearly 2,000—than it does McDonalds and Burger Kings."¹⁵⁴

B. *Financial Vulnerability of Military Personnel*

For those who care about the well-being of American military service members, the recent resurgence of an industry which first gave rise to the term "loan shark" has troubling overtones. A large and well-documented body of literature has explored the precarious financial position of members of the U.S. military. We believe this literature suggests that military service members may have several characteristics which make them especially vulnerable to high-cost indebtedness. From this literature, we have distilled four factors which tend to suggest that military personnel may be uniquely viable targets for predatory lending in general, and payday loans in particular: (1) demographic characteristics which predispose military service members toward high-cost indebtedness; (2) the form, amount, and distribution of military compensation; (3) dislocation faced by military service members and their families; and (4) military cultural considerations.

1. *Demographic Predisposition*

Military service members tend to have demographic characteristics associated with personal indebtedness problems. While there is considerable variation among different service branches, the great majority of military service members are young enlisted personnel. Junior enlisted personnel make up about 75% of the military.¹⁵⁵ In fact, the Department of Defense is "the nation's largest employer of American youth."¹⁵⁶ Unlike their civilian peers, a relatively large proportion of these young people are recently married and have young

¹⁵³ CONSUMER FEDERATION OF AMERICA & THE U.S. PUBLIC INTEREST RESEARCH GROUP, RENT-A-BANK PAYDAY LENDING: HOW BANKS HELP PAYDAY LENDERS EVADE STATE CONSUMER PROTECTIONS 1–2 (Nov. 2001).

¹⁵⁴ Barr, *supra* note 20, at 150 (quoting remarks by John D. Hawke, Jr., Comptroller of the Currency, before the ABA National Community and Economic Development Conference, Baltimore, MD, Mar. 18, 2002).

¹⁵⁵ Pamela C. Twiss & James A. Martin, *Conventional and Military Public Housing for Families*, 73 SOC. SERV. REV. 240, 241 (1999).

¹⁵⁶ Phillips, *supra* note 8, at 340; *see also* DAVID GOTTLIEB, *BABES IN ARMS: YOUTH IN THE ARMY* (1980) (surveying motivation and experiences of new Army recruits).

children.¹⁵⁷ Some commentators have suggested that high health care costs and the growing scarcity of health insurance have forced young parents to turn disproportionately to the military because of its relatively generous government-provided health care system.¹⁵⁸ A small but growing minority of these families are single-parent households.¹⁵⁹

Historically, young enlisted military personnel have hailed from primarily economically disadvantaged backgrounds.¹⁶⁰ Moreover, vulnerable groups have sought out the armed services as a means of moving along both formal and informal paths of citizenship and social privilege.¹⁶¹ For centuries, minorities and recent immigrants have seen service in the armed forces as a way to achieve social legitimacy and legal rights.¹⁶² Especially during major conflicts, such as the Civil War and both World Wars, authorities have waived normal citizenship requirements for alien military personnel.¹⁶³ Many refugees and temporary workers still turn to the military as a way of speeding up immigration procedures.¹⁶⁴ Currently, a small but symbolically important group of about 32,000 non-citizens is serving in the U.S. military.¹⁶⁵ More significant demographically is the disproportionate representation of African Americans in the military, who make up about 13% of the American civilian population, but about 20% of enlisted personnel.¹⁶⁶

¹⁵⁷ Twiss & Martin, *supra* note 155, at 241. The percent of married military service members has increased steadily since the military converted to an all volunteer force. Brenda L. Moore, *The Propensity of Junior Enlisted Personnel to Remain in Today's Military*, 28 ARMED FORCES & SOC'Y 257, 272 (2002). Interestingly, the decrease in the median age at first marriage for military personnel runs opposite to the civilian trend of marrying later in life. Charles C. Moskos, *The American Enlisted Man in the All-Volunteer Army*, in LIFE IN THE RANK AND FILE: ENLISTED MEN AND WOMEN IN THE ARMED FORCES OF THE UNITED STATES, AUSTRALIA, CANADA, AND THE UNITED KINGDOM 35, 40 (David R. Segal & H. Wallace Sinaiko eds., 1986). Currently about 65% of military members are married. BUDDIN, *supra* note 4, at 4.

¹⁵⁸ Harrell, *supra* note 5, at 23.

¹⁵⁹ Twiss & Martin, *supra* note 155, at 241; Karen Jowers, *Single Parents a Growing Segment of Military*, ARMY TIMES, Jan. 25, 1999, at 18.

¹⁶⁰ Glen H. Elder, Jr., *Military Times and Turning Points in Men's Lives*, 22 DEVELOPMENTAL PSYCHOL. 233, 244 (1986).

¹⁶¹ The armed forces are more ethnically diverse than the civilian population. Twiss & Martin, *supra* note 155, at 241.

¹⁶² MORRIS JANOWITZ, *MILITARY CONFLICT* 77-78 (1975); DAVID R. SEGAL, *RECRUITING FOR UNCLE SAM: CITIZENSHIP AND MILITARY MANPOWER POLICY* 10 (1989).

¹⁶³ SEGAL, *supra* note 162, at 10.

¹⁶⁴ Nina Bernstein, *Fighting for U.S., and for Citizenship*, N.Y. TIMES, Jan. 15, 2005, at B1.

¹⁶⁵ *Id.*

¹⁶⁶ Phillips et al., *supra* note 8, at 341.

Enlisted military personnel also have had historically limited educational backgrounds.¹⁶⁷ For instance, at the end of the 1970s, almost half of military enlistees lacked a high school diploma, and only 2.2% had any college experience.¹⁶⁸ Because in recent years military recruiters have focused on applicants with high school degrees, currently about ninety-nine percent of enlistees are high school graduates.¹⁶⁹ Nevertheless, almost half of enlisted personnel list the primary motivation for joining the military as the ability to receive future assistance in obtaining an education that they have not yet acquired.¹⁷⁰

Consumer finance research suggests these demographic characteristics of the nation's enlisted military personnel are serious risk factors for personal debt problems. Young people often lack financial experience and tend to borrow with less regard for the long-term consequences.¹⁷¹ Young families have extreme financial pressure from child-rearing expenses, making debt a tempting option.¹⁷² The emerging class of single-parent military personnel may be especially vulnerable.¹⁷³ Empirical evidence consistently finds an association between single-parent families and a variety of social, health, and financial impairments.¹⁷⁴ Single-income families are less able to overcome income shocks and sudden expenses, making them more likely to borrow and less likely to repay successfully. A recent study of bankrupt families found that "[h]ouseholds without a male present were nearly twice as likely to file for bankruptcy giving a medical reason or identifying a substantial medical debt as households with a male present."¹⁷⁵ Similarly, because enlisted service members tend to come from financially vulnerable backgrounds, they may have fewer familial resources to

¹⁶⁷ Moskos, *supra* note 157, at 35–37. Professor Glen Elder's study of archival data of men born in the 1920s in Berkeley, California showed that young men with poor high school grades and teenage self-inadequacy predicted early timing of military service. Elder, *supra* note 160, at 244.

¹⁶⁸ Moskos, *supra* note 157, at 35–36.

¹⁶⁹ Moore, *supra* note 157, at 259.

¹⁷⁰ GOTTLIEB, *supra* note 156, at 19. Roughly half of enlistees report that they enlisted because they faced unsatisfactory employment options. *Id.*

¹⁷¹ PETERSON, TAMING THE SHARKS, *supra* note 28, at 168.

¹⁷² Frank Green & Mike Freeman, *The Debt Generation: Free Spending 20-Somethings Lured by Easy Credit*, SAN DIEGO UNION TRIB., Jan. 3, 2002, at A1.

¹⁷³ Leslie N. Richards & Cynthia J. Schmiede, *Problems and Strengths of Single-Parent Families: Implications for Practice and Policy*, 42 FAM. REL. 277, 282 (1993) (finding financial problems are "pervasive" for single mothers).

¹⁷⁴ *Id.* at 280.

¹⁷⁵ Elizabeth Warren, Teresa Sullivan, and Melissa Jacoby, *Medical Problems and Bankruptcy Filings*, 2 (Harv. Law Sch. Pub. Law and Legal Theory Working Paper Series, Working Paper No. 009, 2000).

draw on in financial emergencies, in turn forcing them to creditors. Many recent immigrants and their families have tenuous personal finances, face language barriers, and hail from countries relatively unaccustomed to credit.¹⁷⁶ Several commentators have argued persuasively that these characteristics leave recent immigrants vulnerable to targeting by predatory lenders.¹⁷⁷ A large literature suggests that African Americans and other ethnic minorities have faced exclusion from inexpensive creditors and targeting by predatory lenders.¹⁷⁸ Finally, many commentators have argued that individuals with limited education and financial experience have greater difficulty shopping for lower priced loans, leaving them at risk for marketing by high-cost and predatory lenders.¹⁷⁹ All of these factors suggest troubling implications for military service members.

¹⁷⁶ See generally Steven W. Bender, *Consumer Protection for Latinos: Overcoming Language Fraud and English-Only in the Marketplace*, 45 AM. U. L. REV. 1027 (1996).

¹⁷⁷ See, e.g., Charu A. Chandrasekhar, Note, *Can New Americans Achieve the American Dream? Promoting Homeownership in Immigrant Communities*, 39 HARV. C.R.-C.L. L. REV. 169, 172, 188–91 (2004).

¹⁷⁸ See, e.g., ROBERT SCHAFER & HELEN F. LADD, DISCRIMINATION IN MORTGAGE LENDING (1981); Harold A. Black, *Is There Discrimination in Mortgage Lending? What Does the Research Tell Us?*, 27 REV. OF BLACK POL. ECON. 23, 25–27 (1999); Cathy Cloud & George Galster, *What Do We Know About Racial Discrimination in Mortgage Markets?*, 22 REV. OF BLACK POL. ECON. 101, 116–17 (1993); Theodore E. Day & S. J. Liebowitz, *Mortgage Lending to Minorities: Where's the Bias?*, 36 ECON. INQUIRY 3 (1998); Stephen A. Fuchs, *Discriminatory Lending Practices: Recent Developments, Causes and Solutions*, 10 ANN. REV. BANKING L. 461, 466–73 (1991); Fred Galves, *The Discriminatory Impact of Traditional Lending Criteria: An Economic and Moral Critique*, 29 SETON HALL L. REV. 1467, 1472–73, 1481–83 (1999); Glenn W. Harrison, *Mortgage Lending in Boston: A Reconsideration of the Evidence*, 36 ECON. INQUIRY 29 (1998); Helen F. Ladd, *Evidence on Discrimination in Mortgage Lending*, 12 J. ECON. PERSP. 41, 46–47 (1998); Stanley D. Longhofer, *Discrimination in Mortgage Lending: What Have We Learned?*, ECON. COMMENT., Aug. 15, 1996, at 1; Robert E. Martin & R. Carter Hill, *Loan Performance and Race*, 38 ECON. INQUIRY 136 (2000); Alicia H. Munnell et al., *Mortgage Lending in Boston: Interpreting HMDA Data*, 86 AM. ECON. REV. 25, 25–26, 31, 41 (1996); Reynold F. Nesiba, *Racial Discrimination in Residential Lending Markets: Why Empirical Researchers Always See It and Economic Theorists Never Do*, 30 J. ECON. ISSUES 51, 52–55 (1996); Ron Nixon, *Application Denied: Do Lending Institutions Overlook Hispanics?*, 11 HISP. 30, 32–33 (1998); Ronald K. Schuster, *Lending Discrimination: Is the Secondary Market Helping to Make the 'American Dream' a Reality?*, 36 GONZ. L. REV. 153, 162–73 (2000/2001); Peter P. Swire, *The Persistent Problem of Lending Discrimination: A Law and Economics Analysis*, 73 TEX. L. REV. 787, 806–14 (1995). See also *Discrimination in Home Mortgage Lending: Hearing Before the Subcomm. on Consumer and Regulatory Affairs of the S. Comm. on Banking, Housing, and Urban Affairs*, 101st Cong. 118 (1989) (statement of Sen. Alan J. Dixon).

¹⁷⁹ See, e.g., Tania Davenport, Note, *An American Nightmare: Predatory Lending in the Subprime Home Mortgage Industry*, 36 SUFFOLK U. L. REV. 531, 533 (2003).

2. *The Military Compensation System*

The form, amount, and distribution of military compensation may also place military personnel at risk for high-cost debt problems. The most important aspect of military compensation is the lack of it. Junior enlisted military personnel are low-wage entry-level workers. A typical Army private first class makes \$16,884 per year.¹⁸⁰ Like all low-wage workers, military personnel tend to live month-to-month, often struggling to pay their bills. Military surveys reveal that nearly one-third of enlisted service members self-report moderate to severe difficulty in paying their bills.¹⁸¹ Sudden unexpected expenses such as car trouble or legal problems, as well as poor personal financial choices, can all pitch low-wage workers into financial hardship caused by debt. For junior enlisted military personnel, these cash shortages do not always resolve themselves over time because these enlistees tend to see relatively little growth in their monetary compensation over the course of their careers.¹⁸²

Furthermore, military compensation comes with high opportunity costs from long and irregular hours. As Professors Bowen and Orthner observed:

Service in the armed forces involves more than an occupation choice; it is the selection of a life style that permeates almost every aspect of a person's life. Few civilian occupations require the high level of commitment and dedication from their employees that the military services require. Even fewer ask their employees, much less members of the employees' families, to make such a range of personal and family sacrifices to accommodate the work mission, including long work hours, high-stress assignments, required relocations, frequent family separations and reunions, remote tours of service, long-term separations from extended family and friends, residence in foreign countries, and frequent subservience of family needs to mission responsibilities.¹⁸³

At the most practical level, when military personnel fall into financial difficulty, they do not have the option of taking a second job to cover their expenses, which is an important route to overcome financial hardship for civilians.¹⁸⁴ Nor does the military pay overtime to its employees despite requiring

¹⁸⁰ U.S. ARMY, BENEFITS: MONEY, <http://www.goarmy.com/benefits/money.jsp> (last visited Oct. 17, 2005).

¹⁸¹ Martha McNeil Hamilton, *Ignorance Costs Plenty: Officials Promote Financial Literacy*, WASH. POST, Feb. 6, 2002, at E01.

¹⁸² Moore, *supra* note 157, at 261.

¹⁸³ Gary L. Bowen & Dennis K. Orthner, *Introduction*, in THE ORGANIZATIONAL FAMILY: WORK AND FAMILY LINKAGES IN THE U.S. MILITARY, *supra* note 5, at ix, xiii.

¹⁸⁴ See GOTTLIEB, *supra* note 156, at 163; HARRELL, *supra* note 5, at 108.

long hours.¹⁸⁵

The predictability of monthly income for junior enlisted personnel also may place them at risk for debt problems. On the one hand, prospective creditors can be relatively certain that military personnel are going to be paid. Unlike comparable private sector workers, such as service employees, construction workers, and small business entrepreneurs, junior enlisted military personnel are unlikely to be laid off, fired, or have their businesses fail. On the other hand, junior enlisted military personnel often have great difficulty predicting exactly what their monthly income will be in any given month. The Government Accountability Office has found that military families chronically suffer from delays and mistakes in the distribution of their wages. But even when wages are paid correctly, enlisted family income varies significantly with the deployment schedule of the unit.¹⁸⁶ For example, many military families receive a subsistence allowance intended to feed the service member, and many rely on this allowance to feed the entire family and to pay bills.¹⁸⁷ Yet when the service member is unexpectedly deployed or called into the field, this separate allowance is no longer provided, potentially creating an unexpected income shock.¹⁸⁸ The simultaneous likelihood that military members will eventually be paid, combined with unpredictable changes in compensation, make military families likely to borrow to bridge unexpected gaps.

The form of military compensation also limits the ability of military families to adapt to financial crises, potentially forcing them to turn to creditors. Much of military compensation comes in the form of non-fungible in-kind goods and services, rather than a traditional paycheck. Military health care, future tuition assistance, military housing, military food, access to commissaries, and access to military recreational facilities and entertainment are all important components of the compensation package for military personnel.¹⁸⁹ Military recruiters understandably use these side benefits as a way of explaining and justifying relatively low military pay. Nevertheless, the non-fungible nature of non-cash compensation prevents military personnel from converting a significant portion of their resources to overcome income shocks and unexpected expenses. If a civilian family car breaks down, because the primary wage earner is likely to receive all or nearly all of his or her compensation in the form of cash payment, the family can divert resources normally allocated to important but ultimately expendable purchases into repairing the car. For instance, the family might be able to forego entertainment or cut back on food expenditures through more

¹⁸⁵ GOTTlieb, *supra* note 156, at 163; HARRELL, *supra* note 5, at 108.

¹⁸⁶ HARRELL, *supra* note 5, at 108.

¹⁸⁷ *Id.* at 108–09.

¹⁸⁸ *Id.*

¹⁸⁹ See *supra* note 3 and accompanying text.

parsimonious shopping. A family that is saving for educational expenses can temporarily halt monthly contributions, or even draw from pre-existing reserves. Cash compensation can be more readily applied to repairing the car (or to servicing a loan balance which paid for repairing the car). This diversion of resources may be more difficult for military families because their pool of *fungible* resources is relatively smaller than their otherwise identical civilian counterparts. A military family cannot transform its right to receive military entertainment or food into cash. Nor can it transform a military promise to pay future school tuition into cash which might be useful in repairing the car. This is, of course, not to belittle the value of the considerable in-kind compensation military families receive; it is merely to point out its illiquidity. Because military families receive a comparatively greater portion of their compensation in non-cash forms, we should expect that they will be marginally less able to adapt their monthly budget to overcome financial hurdles than will a family that receives liquid cash compensation of the same absolute value.

The military wage distribution system may also give aggressive lenders a relatively greater opportunity to capture the income of enlisted military personnel. As a service to military members, the armed services have allowed members to "allot" their income; creditors, including landlords, utilities, merchants, and others, can be paid directly by the government out of service members' wages.¹⁹⁰ This provides a convenience to service members who may be unable to mail payments while in the field. However, some creditors make allotments a condition of lending money. Margaret Harrell's study of junior enlisted Army personnel suggests that the system tends to encourage service members to take on credit, for which they would not qualify if they were civilians.¹⁹¹ If true, this would leave members precariously over-extended and vulnerable to high-cost debt marketing. We should also expect that the system will erode the ability of military borrowers to deter creditor over-reaching with the most effective strategy: refusing to repay.¹⁹²

3. *The Dislocation of Military Service Members*

Military service members may be at risk for debt problems because they have difficulty maintaining traditional support networks within the institutional constraints of the armed forces. The military is a prototypical example of what

¹⁹⁰ See 32 C.F.R. § 113.6 (2005).

¹⁹¹ HARRELL, *supra* note 5, at 109.

¹⁹² The Truth in Lending Act recognizes the importance of the ability to refuse payment by allowing credit card borrowers to assert against credit card lenders most claims and defenses assertable against merchants who honor credit cards.

Lewis Coser called a "greedy" institution.¹⁹³ For instance, the military tends to place great demands on its members with respect to geographic mobility. Military personnel are frequently transferred between posts and assignments. Historically, most military assignments last for no more than three years. One study found that 86% of enlisted personnel moved at least once in the three years preceding the survey.¹⁹⁴ Seasoned service members and officers are also expected to change locations frequently. Seventy-six percent of enlisted personnel with seven to ten years of service reported moving three or more times.¹⁹⁵ For officers, this figure rose to 82%.¹⁹⁶ "For those with more than fourteen years of service, 40% of enlisted personnel and 55% of officers reported more than nine moves."¹⁹⁷ Moreover, because there are often waiting lists for military housing, many transfers involve two moves: one into a temporary private rental home and a second move into less expensive military housing when it becomes available.¹⁹⁸

Because of security and training needs, military posts are also often in isolated locations far from mainstream civilian institutions. Even when stationed at bases located in large metropolitan areas, service members face significant emotional and cultural barriers which prevent them from developing a sense of community with nearby civilians.¹⁹⁹ Moreover, many may be hesitant to integrate into civilian communities because they move so frequently.²⁰⁰ Accordingly, military members are often reluctant to engage in, and are slow to be recognized by, local democratic institutions.²⁰¹ Low voter registration and participation rates of military personnel may make local leaders less responsive to financial hardship suffered by soldiers at the hands of politically aggressive local merchants.²⁰² Many military personnel also report outright tension between

¹⁹³ LEWIS A. COSER, *GREEDY INSTITUTIONS: PATTERNS OF UNDIVIDED COMMITMENT* (1974); Mady Wechsler Segal, *The Military and Family as Greedy Institutions*, 13 *ARMED FORCES & SOCIETY* 9, 9 (1986).

¹⁹⁴ Zahava D. Doering & William P. Hutzler, *Description of Officers and Enlisted Personnel in the U.S. Armed Forces: A Reference for Military Manpower Analysis* 161 (1982).

¹⁹⁵ Segal, *supra* note 193, at 17.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* (citing Doering & Hutzler, *supra* note 194).

¹⁹⁸ *Id.* at 22.

¹⁹⁹ Martin & Orthner, *supra* note 5, at 175.

²⁰⁰ For example, Buddin has found that military members living in military housing typically have higher use rates for military family support and recreation programs and may integrate into surrounding communities slowly. BUDDIN, *supra* note 4, at 73.

²⁰¹ LUTZ, *supra* note 5 (discussing weak local democratic culture from low voter registration and participation around Ft. Bragg).

²⁰² *Id.*

service members and civilians who live near military posts.²⁰³ Overseas assignments not only create geographic isolation, but also place service members and their families in foreign and sometimes resentful cultures.

These geographic mobility issues dislocate military personnel from their extended families, which can erode their ability to bridge unexpected expenses and income shocks.²⁰⁴ When a car breaks down, siblings, parents, or long-time friends may not be available to assist with temporary transportation. When a child is ill, or when work requires long hours, grandparents may not be close by to provide free child care. Geographic separation is especially difficult for young enlisted personnel and their spouses, many of whom are away from their families and long-time friends for the first time.²⁰⁵ There may be less incentive to invest in new friendships and long-term support networks, since these relationships are likely to be severed when the service member is next transferred.²⁰⁶

Geographic constraints placed on military families also create a significant earnings penalty for the spouses of service members. Although 60% of military spouses work outside the home, they suffer disruption to their careers when the family is forced to relocate. And, because bases are typically in isolated locales which often have depressed economies, there are often few employment prospects for spouses.²⁰⁷ The military does provide spousal employment services, which aim to help spouses adjust financially to relocation;²⁰⁸ however, service members rated this service dead last in user satisfaction among all military community and family support programs.²⁰⁹ Studying this phenomenon in over 18,000 military personnel observations, Payne, Warner, and Little found that three-year rotations caused a 40% decrease in the income that a spouse would have earned had he or she been able to remain at one location for six years.²¹⁰

²⁰³ One soldier explained:

I never seen anything like it anywhere. It's like they can't wait to see you. Like they know when troops get paid so they have everything ready. The prices just go sky high whenever you get paid. They make it real clear that they hate you. Even when they are taking your money they make you feel like you are not a human person. Anything goes wrong in that town and they blame the Army. Babies come up missing, people getting killed. The soldier gets all the blame for it, so they look at all of us that way.

GOTTLIEB, *supra* note 156, at 60.

²⁰⁴ HARRELL, *supra* note 5, at 108–09.

²⁰⁵ Segal, *supra* note 193, at 17–18.

²⁰⁶ *Id.* at 18.

²⁰⁷ HARRELL, *supra* note 5, at 108–09.

²⁰⁸ BUDDIN, *supra* note 4, at 51–52.

²⁰⁹ *Id.* On a five-point scale, respondents gave military spouse employment services an average score of 2.88. *Id.* at 51. In comparison, the highest-rated service was chaplain services, rated at 4.12. *Id.*

²¹⁰ Deborah M. Payne, John T. Warner & Roger D. Little, *Tied Migration and Returns*

Recognizing these facts, many military families end up foregoing human capital investments for military spouses because education, training, and occupational experience are less likely to yield returns in the long run.²¹¹ This suggests another risk factor for debt problems because a second income is an important hedge for income shocks and sudden expenses.²¹² When one partner suffers a setback, the other can take up the slack to avoid reliance on creditors. Spouses of military personnel are comparatively less able to do this because of the demands placed on military families.

Frequent moves also prevent military members from reaping many of the benefits of home ownership. This is important because family homes are often the most important device for accumulating and stabilizing wealth in the American middle class. Unlike other common middle- and lower-class physical assets, such as automobiles, homes generally appreciate in value over time, giving their owners an investment return. Home mortgages are also forced savings mechanisms which discipline families. As homeowners pay down their mortgages, they accumulate equity in a valuable asset, which they can leverage to obtain low-cost financing. Low-cost home mortgages are a valuable tool in overcoming income shocks and unexpected expenses without relying on high-cost lenders. Similarly, when long-time homeowners suffer a permanent decline in income from illness, divorce, retirement, or job loss, they have the option of selling their home to create a pool of liquid funds with which to restart their financial development. Professor Dalton Conley has argued persuasively that home ownership is also the most important asset in promoting long-term intergenerational transfer of wealth from parents to their children.²¹³

Because military families move frequently, it makes less sense for them to invest in purchasing a family home.²¹⁴ Most financial planners advise that realtor commissions, mortgage loan closing costs, and large interest payments at the beginning of a mortgage loan term eliminate the financial benefits of home ownership for families that plan to own a home for fewer than three years. Moreover, those military families who do end up staying in one location long enough to make home ownership feasible will not usually know this ahead of time. The result is that many military families are forced to rent their homes, either in fact (from a landlord) or in effect (from the real estate sales and finance industry costs). Military housing or housing allowances offset missed home ownership to a degree, but these substitutes do not create investment returns,

to Human Capital: The Case of Military Wives, 73 SOC. SCI. Q. 324, 328, 337 (1992).

²¹¹ *Id.* at 325.

²¹² HARRELL, *supra* note 5, at 108–09.

²¹³ DALTON CONLEY, BEING BLACK, LIVING IN THE RED: RACE, WEALTH, AND SOCIAL POLICY IN AMERICA 41–43 (1999).

²¹⁴ RICHARD BUDDIN ET AL., AN EVALUATION OF HOUSING OPTIONS FOR MILITARY FAMILIES 26 (1999).

forced savings, low-cost borrowing opportunities, or intergenerational wealth transfer effects.²¹⁵ Moreover, service members have given these benefits and services low marks, complaining of long waiting lists, poor distribution of information, and poor quality housing stocks.²¹⁶

4. *Military Culture and Financial Obligations*

Military attitudes toward financial problems may facilitate predatory lending to enlisted personnel. The military, both as a matter of policy and institutional culture, steadfastly refuses to allow service members to avoid financial obligations.²¹⁷ While this policy is certainly laudable in most contexts, such as child support or tax obligations, it may be more problematic in the context of predatory lenders. The institutional demand that service members have their financial affairs in order is backed up with the very real threat of reprimand, loss of security clearances, bar to re-enlistment, denial of promotion, court martial, and dishonorable discharge.²¹⁸ "Soldiers are required to manage their personal affairs satisfactorily and pay their debts promptly," explain Army regulations.²¹⁹ "Failure to do so damages their credit reputation and affects the Army's public image."²²⁰ Thus, military service members who do not pay their bills are often subject to intense pressure from their commanding officer.²²¹ Where many

²¹⁵ *Id.* at 28.

²¹⁶ BUDDIN, *supra* note 4, at 51–52.

²¹⁷ Alan L. Cook, *The Armed Forces as a Model Employer in Child Support Enforcement: A Proposal to Improve Service of Process on Military Members*, 155 MIL. L. REV. 153, 168–69 (1998).

²¹⁸ *Id.* at 169 n.103; CBSNews.com, *supra* note 10. For example, the Navy Military Personnel Manual states:

Members of the Naval service are expected to pay their just debts and financial obligations in a proper and timely manner.

...

The way in which one handles their private financial affairs provides a reliable indication of their general character and trustworthiness.

...

Failure to pay just debts . . . is evidence of irresponsibility and may jeopardize their security clearance status, advancement status, duty assignment, qualification for reenlistment or extension of enlistment, retention, and in aggravated circumstances may become grounds for disciplinary and/or administrative separation action.

NAVY MILITARY PERSONNEL MANUAL 7000-020 (2005), http://buperscd.technology.navy.mil/bup-updt_CD/BUPERS/MILPERS/Milpers.pdf.

²¹⁹ Indebtedness of Military Personnel, Army Regulation 600-15, at 1-5a (1986).

²²⁰ *Id.*

²²¹ Edward Robinson, *Big Banks Fuel Growth of Payday Lenders*, TENNESSEAN.COM,

working-class Americans might simply refuse to pay an over-reaching lender, service members may not have this option. We should also expect that bankruptcy is a less realistic option for most military personnel. Where civilians might be able to defeat over-reaching unsecured creditors by filing a Chapter 7 bankruptcy petition, many in the military might simply refuse to entertain this possibility.

This military cultural commitment to financial responsibility also helps ensure that military personnel are relatively easy to track. For some high-cost lenders, the possibility that the debtor may simply skip town or disappear is one of the greatest risks of doing business. High-cost creditors often employ skip tracing departments and private investigators to track down delinquent debtors. Creditors also face difficulty in delivering service of process on elusive civilian borrowers delaying judicial collection proceedings. Some civilian debtors can obtain an informal "discharge" of their debts by simply disappearing. In comparison, the military maintains a system for locating their service members. Importantly, the military has a defined and mechanical system where it actively assists companies and individuals seeking to serve process on military personnel.²²²

The military culture and policies dealing with financial obligations make it relatively more difficult for military personnel to escape their financial past. This fact should make military borrowers a better credit risk which, given efficient price competition, could encourage lenders to pass on lower prices. But it also probably encourages targeting of military service members by lenders who specialize in extending onerous loans to uninformed and overextended borrowers. Predatory lending is, above all, a collection business. Unsecured predatory lenders do not attempt to compete by offering lower prices than their competition, but rather by extracting debts others cannot. The military insistence on repayment under all circumstances may simply assist predatory lenders in making and enforcing questionable loans. Unlike the civilian marketplace, creditors specializing in loans to military personnel can expect a free and effective built-in pressure and tracking network to assist them in forcing payment.

C. Payday Lending to Military Personnel

1. Congress's Position: The Servicemembers' Civil Relief Act

Historically, Congress has not been blind to the financial vulnerability of military personnel. Ever since the early nineteenth century, Congress has taken

Nov. 29, 2004, <http://www.tennessean.com/business/archives/04/11/62129411.shtml> (sergeant discussing discharge of soldiers from debt defaults).

²²² Cook, *supra* note 217, at 170–72.

steps to protect service members from civil lawsuits brought by creditors. During both the War of 1812 and the Civil War, Congress passed “stay laws” which suspended civil proceedings against soldiers and sailors until they returned from war.²²³ When passing similar legislation during World War I,²²⁴ a House Report explained:

[T]here are . . . tens of thousands of men in military service who will be utterly ruined and their families made destitute if creditors are allowed unrestrictedly to push their claims; and yet these same soldiers, if given time and opportunity can, in most cases, meet their obligations dollar for dollar. The country is asking . . . its young men to risk their lives and, if need be, to give up their lives for their country. Before long even more will be asked to make the same sacrifice. Is it more than naked justice to give to the savings of these same men such just measure of protection as is possible?²²⁵

World War II ignited similar concerns, causing Congress again to protect service members, this time with the Soldiers’ and Sailors’ Civil Relief Act of 1940.²²⁶ This law authorized “temporary suspension of legal proceedings and transactions which [could have] prejudice[d] the civil rights of persons” fighting in World War II.²²⁷ Unlike previous legislation, the World War II law did not

²²³ Terry M. Jarrett, *The Servicemembers’ Civil Relief Act: Important New Protections for Those in Uniform*, 60 J. MO. B. 174 (2004) (quoting H.R. REP. NO. 108-81, at 32 (2003)). The Civil War era statute read:

[W]henever, during the existence of the [Civil War], any action, civil or criminal, shall accrue against any person who, by reason of [war], . . . cannot be served with process . . . the time during which such person shall so be beyond the reach of legal process shall not be deemed . . . as any part of the time limited by law for the commencement of such action.

Act of June 11, 1864, ch. 118, 13 Stat. 123; see U.S. ARMY JUDGE ADVOCATE GENERAL’S SCHOOL, SOLDIERS’ AND SAILORS’ CIVIL RELIEF ACT GUIDE 1-1 (July 2000), http://www.louisvillelaw.com/federal/ArmyPubs/ja260_ssra_db.pdf [hereinafter JAG GUIDE].

²²⁴ The Soldiers’ and Sailors’ Civil Relief Act of 1918, ch. 20, 40 Stat. 440, did not completely ban all civil actions, instead requiring “trial courts to take whatever action equity required when a service member’s rights were involved in a controversy.” JAG GUIDE, *supra* note 223, at 1-1. Specifically, it protected soldiers from proceedings in bankruptcy, foreclosure, repossession of property, default judgments, stays of proceedings, and evictions. Jarrett, *supra* note 223, at 174 (citing H.R. REP. NO. 108-81, at 33 (2003)).

²²⁵ Boone v. Lightner, 319 U.S. 561, 565 n.2 (1943) (quoting H.R. REP. NO. 65-181, at 2-3 (1918)).

²²⁶ Soldiers’ and Sailors’ Civil Relief Act of 1940, ch. 888, § 100, 54 Stat. 1178 (1940).

²²⁷ *Id.* at 1179. The Act’s specific protections included the following:

staying civil court proceedings if military service materially affected the service

automatically expire at the end of the war. As a result, although Congress amended the Act many times,²²⁸ it stayed in effect until December 2003, when Congress completely overhauled it under the new name of the Servicemembers' Civil Relief Act of 2003 (SCRA).²²⁹

Like previous statutes, the purpose of the SCRA is:

to provide for, strengthen, and expedite the national defense

...

[and to enable] servicemembers of the United States . . . to devote their entire energy to the defense needs of the Nation [by providing] for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.²³⁰

Among other provisions, the SCRA protects against default judgments;²³¹ prohibits creditors from repossessing, selling, foreclosing on, or seizing the property of a service member;²³² and protects military families from being evicted.²³³ Perhaps most significantly, the SCRA also enables service members to reduce interest rates on any previous obligations to a six percent annual rate.²³⁴

Nevertheless, the SCRA has virtually no impact on payday lending. Payday lenders generally do not take security interests in personal property, making repossession protections irrelevant. And, although the Act requires a reduction in

member's ability to defend his or her interest; reducing interest rates to six percent on pre-service loans and obligations; requiring a court order before a service member's family could be evicted from a rented residence for non-payment if the monthly rent was \$1200 or less; terminating a pre-service residential lease; and allowing service members to retain their state of residence for tax purposes despite military relocations to other states.

Jarrett, *supra* note 223, at 175.

²²⁸ *E.g.*, Act of Oct. 6, 1942, ch. 581, 56 Stat. 769; Act of Jan. 20, 1942, ch. 10, 56 Stat. 10; Act of May 13, 1942, ch. 303, 56 Stat. 276; Revenue Act of 1942, ch. 619, 56 Stat. 798; Soldiers' and Sailors' Civil Relief Act Amendments of 1991, Pub. L. No. 102-12, 105 Stat. 34; Veterans Benefits Act of 2002, Pub. L. 107-330, 116 Stat. 2820.

²²⁹ 50 U.S.C. app. §§ 501-596 (2005).

²³⁰ *Id.* § 502.

²³¹ *Id.* § 521.

²³² *Id.* §§ 532-533.

²³³ *Id.* § 531.

²³⁴ *Id.* § 527. This protection applies only to obligations incurred by the service member prior to entering active duty.

interest rates to six percent on any debt incurred before going on active duty,²³⁵ the legislation imposes no limit on rates of loans consummated *after* a service member is activated. Consequently, the SCRA's only threat to the payday loan industry would arise if a service member entered into a payday loan transaction and then, and only then, was called up to active duty. In that case, the SCRA would reduce the annual interest rate on the loan from around 450% to 6% "during the period of military service."²³⁶ Currently, federal law provides no interest rate cap whatsoever on loans made to active duty service members.

Some legislators from both parties have acknowledged their discomfort with this fact.²³⁷ As of this writing, Congress is considering at least one bill, called the Servicemembers Anti-Predatory Lending Protection Act, which would cap annual percentage rates of payday loans to military members at 36%—a reduction of about 400 percentage points from current average rates.²³⁸ Sponsored by Congressman Sam Graves (R-Mo.), the bill would also prohibit payday lenders from automatically renewing, refinancing, or consolidating a payday loan with the proceeds of another loan without executing a new loan document.²³⁹ The bill has struggled under intense behind-the-scenes opposition from payday lenders.²⁴⁰ With Representative Graves's bill seemingly stalled, and national attention focused on the well-being of service members suffering from conflict in the Middle East, the issue appears likely to remain at the forefront for some time.

²³⁵ 50 U.S.C. app. § 527 (2005).

²³⁶ *Id.* § 527(a)(1). In order for a service member to take advantage of the provision, he or she need only provide to the lender written notice and a copy of the military orders calling the service member to duty. *Id.* § 527(b). If the lender were to object, a court could refuse to reduce the interest rate if it determined that the service member's military service did not "materially affect[]" his or her ability to pay the interest as stated in the original loan contract. *Id.* § 527(c).

²³⁷ See Ken Newton, *Bill Targets Payday Loans to Military*, ST. JOSEPH NEWS-PRESS (St. Joseph, Mo.), Feb. 10, 2005, at 1B.

²³⁸ H.R. 5300, 108th Cong. § 2 (2004).

²³⁹ *Id.*

²⁴⁰ When Representative Graves first introduced the legislation in 2004, it was referred to the House Committee on Veterans' Affairs, and then to the Subcommittee on Benefits. Thirteen days later, the bill stalled and sank. Henriques, *supra* note 12. On January 4, 2005, Representative Graves resubmitted the bill with the same text. As of February 2005, the House Committee on Veterans' Affairs was still reviewing the bill, and it was considering expanding the bill to include non-military borrowers. Newton, *supra* note 237.

2. *The Debate: Do Payday Lenders Target Military Service Members?*

Given the resurgence of payday lending in the past decade, the factors placing military personnel at risk for debt problems, and the absence of direct federal regulatory control under the SCRA, it was perhaps inevitable that questions over payday lending to service members would develop. Recently, military leaders and rank-and-file enlisted personnel have complained about the harsh consequences of payday loans for service members. A front page *New York Times* article told the story of a young Navy Petty Officer and his wife who borrowed \$500 from a Puget Sound payday lender. The sailor's wages could not keep up with the interest forcing him to borrow again and again until he had borrowed over \$4000—about 25% of his annual income—in instant loans from lenders with official names like “Military Financial Network.”²⁴¹ Based on industry records, the article informally estimated that 26% of all military households have borrowed from payday lenders.²⁴² Network television news bureaus have given airtime to military complaints.²⁴³ Faculty from the Judge Advocate General's School have bemoaned the consequences of payday loans for enlisted personnel, arguing that “[r]arely does the service member emerge from [a payday loan] . . . in better financial condition and often only gets deeper in debt.”²⁴⁴ Rear Admiral David Architzel has complained that payday loans “seem [like] an appealing solution” for the tight budget problems of enlisted military personnel, but actually “compound[] their financial problems by subjecting them to the additional hardships of what are effectively unreasonable interest rates.”²⁴⁵ A director of a state Navy Marine Corps Relief Society, which attempts to assist service members in financial trouble, explained that the payday lending problems for service members are “getting worse, really—much, much worse.”²⁴⁶ A chorus of military personnel and journalists have complained that payday lenders are now flocking to the highways and strip malls near the gates of military bases to feed off the wages of enlisted personnel.²⁴⁷

²⁴¹ Henriques, *supra* note 12; U.S. ARMY, *supra* note 180.

²⁴² Henriques, *supra* note 12. Previous research by Gregory Elliehausen suggests that approximately 180,000 military households used payday loans in 2002. The *New York Times* compared this figure to Pentagon personnel figures to come up with the 26% estimate. *Id.*

²⁴³ CBSNews.com, *supra* note 10.

²⁴⁴ *The High Cost of Borrowing*, *supra* note 15

²⁴⁵ Shean, *supra* note 14.

²⁴⁶ Henriques, *supra* note 12.

²⁴⁷ See, e.g., Ian McNutly, *Fast Cash Outfits Win Enemies*, NEW ORLEANS CITYBUSINESS, Jan. 21, 2002, at 1 (“[I]t was changes in state laws that opened the doors to payday lending in Louisiana and around the country. In the early 1990s, payday lenders first started showing up around Fort Polk army base in Leesville.”); *Borrowers Trapped*, *supra* note 13 (“The [payday] loans are made by storefront businesses in ‘flashy, neon sign-adorned

Consumer advocacy groups have also seized on these complaints and conducted informal investigations over the merits of these claims. Steven Tripoli and Amy Mix, consumer advocates with the National Consumer Law Center, prepared a report discussing a variety of consumer scams and high-priced loans, including payday loans targeted at military service members.²⁴⁸ The study informally collected business newspaper advertisements, loan contracts, applications, and disclosure statements.²⁴⁹ The report also includes letters from military leaders complaining of the effects of payday loans and other harsh business practices on service members.²⁵⁰ Finally, the National Consumer Law Center researchers visited the locale surrounding Kings Bay Naval Submarine Base in southeastern Georgia and Mayport Naval Air Station nearby in northeastern Florida.²⁵¹ The report concludes that predatory lending, high-priced goods and services, and other scams are plaguing military communities.²⁵² Consumers Union, the publisher of *Consumer Reports* magazine, also has inquired whether payday lenders target military personnel, conducting an informal telephone survey of 31 payday lenders in six Texas cities.²⁵³ The purpose of the informal survey was to show how the payday loan processes work, rather than to collect statistical information on payday lender rates, practices, or clientele.²⁵⁴ The small survey sample and informal methods did not distinguish between payday loans to military and civilian customers. Nevertheless, the report concluded that payday lenders are targeting military personnel.

Payday lenders vociferously deny these claims, attacking consumer advocacy reports as unscientific. To support their position, the Community Financial Services Association (CFSA), a payday lending industry trade association, has recently retained two public relations firms specializing in reputation crisis

buildings (that) line the roadways surrounding the military bases, obviously targeting the serviceman”); Shean, *supra* note 14 (“Prall of the Navy-Marine Corps Relief Society said payday lenders tend to concentrate near military installations because members of the military have steady jobs and checking accounts for direct deposit of their paychecks.”); CBSNews.com, *supra* note 10 (“On Gen. Screven Way, the one-mile strip of fast-food joints and pawn shops leading to the front gate of Fort Stewart, getting a cash loan of \$100 to \$500 is about as easy as buying a cheeseburger.”).

²⁴⁸ NATIONAL CONSUMER LAW CENTER, IN HARM’S WAY—AT HOME: CONSUMER SCAMS AND DIRECT TARGETING OF AMERICA’S MILITARY AND VETERANS (2003), http://www.consumerlaw.org/initiatives/military/content/report_military.pdf.

²⁴⁹ *Id.* at 45–54.

²⁵⁰ *Id.* at 59–66.

²⁵¹ *Id.* at 7–9.

²⁵² *Id.* at 29.

²⁵³ MUECKE & SCHNEIDER, *supra* note 11.

²⁵⁴ *Id.* at 1–2.

management to influence popular perceptions of payday loans.²⁵⁵ These firms have issued a press release reporting a telephone survey purporting to establish that few military personnel have borrowed from payday lenders.²⁵⁶ In conducting the survey, the public relations firms purchased a list of military personnel from Equifax, a credit reporting agency that maintains credit histories of consumers.²⁵⁷ The firms then telephoned approximately 1000 military personnel, of whom 37 admitted to taking out a payday loan in the last five years.²⁵⁸ From this, the public relations firms concluded that 3.69% of military personnel use payday loans.²⁵⁹

However, this telephone survey methodology is seriously flawed for at least six reasons. First, the survey did not speak with spouses of service members, many of whom actually handle family finances, including borrowing money.²⁶⁰ Second, the survey ignores a classic self-response bias in that many debtors do not admit to borrowing money when approached by strangers.²⁶¹ In part a result of personal embarrassment over financial problems, this self-reporting bias is a serious methodological problem that has challenged consumer credit research for over a century.²⁶² Third, relying on a credit reporting agency for a contact list introduces serious sample problems. Many of the most financially vulnerable service members are as young as eighteen years old, and either may not yet have credit histories with Equifax, or may not be identified as military personnel in those histories. Relying on credit histories for the survey sample probably artificially selects relatively established service members, such as officers and senior enlisted personnel. Fourth, many of the most vulnerable military service members are impossible to reach through a telephone survey. Some junior

²⁵⁵ Press Release, Steven Schlein & Jay Leveton, *Less Than 4 Percent of Military Have Taken a Payday Advance Loan Says New Survey* (Feb. 3, 2004) (on file with authors).

²⁵⁶ *Id.*

²⁵⁷ Memorandum from Penn, Schoen & Berland Associates to Board of Directors, Community Financial Services Association of America (Jan. 26, 2005) (on file with authors).

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ Because about 65% of military service members are married, we should expect surveying only service members and not their spouses to significantly reduce reported payday loan rates from actual use. BUDDIN, *supra* note 4, at 4.

²⁶¹ See, e.g., Jeff McDonald & Norberto Santana Jr., *Payday Loans Have Financial Dark Side: High Charges Lead to Lasting Cycle of Debt, Officials Warn*, SAN DIEGO UNION-TRIB., Mar. 9, 2004, at A1 (discussing refusal of approached San Diego sailor to discuss terms of payday loan).

²⁶² See CALDER, *supra* note 125, at 40 (discussing Census Bureau fears that public hostility from survey questions about debt would destroy the entire 1890 census); JANET FORD, *THE INDEBTED SOCIETY: CREDIT AND DEFAULT IN THE 1980S*, 126-130 (1988) (empirical findings suggesting many debtors actively conceal debt problems out of embarrassment).

enlisted personnel live in on-base barracks that lack individual telephones. Similarly, many service members are currently out of reach in combat zones overseas, even though their families may be financially struggling at home. Fifth, the survey focused on payday loans identified as such, and does not make reference to payday loans masquerading as something else, such as a “sale-lease-back” transaction or “catalog sale” loan.²⁶³ Some survey respondents may have reported not taking out a payday loan, even though they have used a “catalog sale” lender. Finally, the survey authors have not published, nor even publicly released, their survey instrument or methodology for peer review. Given that the public relations firms that commissioned and conducted the study have reputations for bare knuckle political advocacy, the veracity of the survey should perhaps be treated with some caution.²⁶⁴ Nevertheless, there is certainly some truth to the argument advanced by one lobbyist for payday lenders in Georgia. He asserts: “They’re not preying on anybody—they’re just open for business.”²⁶⁵

III. METHODS

To date, there has been no nationwide, scientific research on whether payday lenders do in fact target military personnel. In Part III.A, we first discuss the viability of using combined geographic and legal analysis to probe issues surrounding payday lending and the military. In Part III.B, we describe our methodology in conducting an extensive empirical study of payday lending to military personnel.

A. Law and Geography: Theoretical Considerations

Interdisciplinary legal and geographic scholarship explores the relationship between law and space. It shows how law and legal institutions can manifest themselves in traceable ways across locations and boundaries. While legal rules are a product of human thought and communication, they are designed to control and influence events in the physical world. Jurists, legislators, and administrators

²⁶³ See Gelles, *supra* note 141 and accompanying text.

²⁶⁴ Douglas Fischer, *Chemical Industry May Fight Tests*, OAKLAND TRIB., Nov. 21, 2003 (on file with author); see also Glen Martin, *Chemical Industry Told to Get Tough: Lobbyist's Memo Advises Hardball Tactics for Fighting Tighter California Regulations*, S.F. CHRON., Nov. 21, 2003, at A21 (“‘They’re known for creating deceptive, phony front groups,’ Walker said. ‘They go through people’s trash; they make a policy of hiring former FBI and CIA operatives. Their motto basically is that they’re not a PR firm—you hire them when you want to win a war.’ . . . Steven Schlein, a senior vice president with Nichols-Dezenhall, defended the firm’s tactics. ‘We may be aggressive in the service of our clients, but we never break the law,’ he said.”).

²⁶⁵ CBSNews.com, *supra* note 10.

all perceive the physical world and craft their policies in relation to it. Thus, "law and geography" scholarship uses geographic tools to understand the consequences of legal policies and institutions. In turn, it explores the "inertia of space"—that is, how space shapes the process and substance of law.²⁶⁶

In recent years, many law and geography scholars have come to "interrogate the legal from a critical geographic perspective," often exposing the hidden bigotries of our laws.²⁶⁷ These scholars sometimes draw inspiration from Foucault, who noted that "[a] whole history remains to be written of *spaces*—which would at the same time be the history of *powers* (both these terms in the plural)—from the great strategies of geo-politics to the little tactics of the habitat, . . . passing via economic and political installations."²⁶⁸ For example, Richard Ford has argued that race-neutral local jurisdictional boundaries are vestiges of America's segregated past that continue to racially define residential space and in turn perpetuate a cycle of inequality independent of our private choices.²⁶⁹ Similarly, David Delaney has examined the way courts have used perceived geographic "facts" to provide authority for limiting constitutional protection of black school children in school desegregation cases.²⁷⁰ Carol Sanger has pointed out that in the post-automobile world, suburban geographic patterns and zoning ordinances have helped rigidify gender roles by creating the "chauffeur-mother."²⁷¹ Leslie Moran uses a spatial analysis of Manchester's gay

²⁶⁶ Nicholas K. Blomley & Joel C. Bakan, *Spacing Out: Towards a Critical Geography of Law*, 30 OSGOODE HALL L.J. 661, 664 (1992). There is, of course, far too much useful law and geography scholarship to list here. For a short introduction to the still-emerging field, see *id.*; David Delaney, et al., *Preface: Where is Law?*, in THE LEGAL GEOGRAPHIES READER: LAW, POWER, AND SPACE xiii (Nicholas Blomley et al. eds., 2001); Jane Holder & Carolyn Harrison, *Connecting Law and Geography*, in LAW & GEOGRAPHY 2 (Jane Holder & Carolyn Harrison eds., 2002).

²⁶⁷ Delaney, et al., *supra* note 266, at xv.

²⁶⁸ Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1857 (1995) (quoting Michel Foucault, *The Eye of Power*, in POWER/KNOWLEDGE 146, 149 (Colin Gordon ed., Colin Gordon et al. trans., 1980)).

²⁶⁹ *Id.* at 1845; see also Kay J. Anderson, *The Idea of Chinatown: The Power of Place and Institutional Practice in the Making of a Racial Category*, 77 ANNALS ASS'N. AM. GEOGRAPHERS 580 (1987) (exploring how legal classification of an area as "Chinatown" affected discriminatory racial ideology); Richard Thompson Ford, *Geography and Sovereignty: Jurisdictional Formation and Racial Segregation*, 49 STAN. L. REV. 1365 (1997) (contrasting the legal treatment of electoral districts with that of local government boundaries).

²⁷⁰ David Delaney, *The Boundaries of Responsibility: Interpretations of Geography in School Desegregation Cases*, in THE LEGAL GEOGRAPHIES READER, *supra* note 266, at 54, 67.

²⁷¹ Carol Sanger, *Girls and the Getaway: Cars, Culture, and the Predicament of Gendered Space*, 144 U. PA. L. REV. 705, 709 (1995).

village in the United Kingdom as a vehicle to explore heterosexism in law.²⁷² Moreover, the landmark case *Shelley v. Kraemer*, which struck down legal enforcement of racially restrictive covenants, is perhaps best thought of as a critical “law and geography” motivated opinion.²⁷³

Other law and geography scholars use geographic tools to tease out otherwise imperceptible legal inefficiencies or to track troubling spatial results of law. For instance, Robert Ellickson has argued that if we used municipal codes of conduct regulating panhandling and other chronic nuisances that varied spatially from street to street, we might better balance rights of homeless people and other city dwellers.²⁷⁴ Geographic analysis of the Organ Transplant Act showed pockets of inadequate organ distribution and missed opportunities for organ harvesting in rural areas and among ethnic minorities.²⁷⁵ Erik Luna has advocated the use of crime mapping in developing more transparent, efficient, and fair policing.²⁷⁶ Robert Goldstein has argued that recent advances in mapping technology have the potential to better measure and conceptualize the success and failures of environmental law.²⁷⁷

Interdisciplinary law and geography analysis has also produced influential consumer financial services scholarship. Most prominently, several authors have used geographic analysis of home mortgage lending patterns to demonstrate racial bias in approval of credit applications.²⁷⁸ Moreover, geographic analysis

²⁷² Leslie J. Moran, *The Queen's Peace: Reflections on the Spatial Politics of Sexuality in Law*, in LAW & GEOGRAPHY, *supra* note 266, at 85, 99–107.

²⁷³ *Shelley v. Kraemer*, 334 U.S. 1 (1948).

²⁷⁴ Robert C. Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning*, 105 YALE L.J. 1165, 1171–72 (1995); cf. Don Mitchell, *The Annihilation of Space by Law: The Roots and Implications of Anti-Homeless Laws in the United States*, 29 ANTIPODE 303, 310–12 (1997) (arguing that laws seek to erase the homeless through outlawing activities connected to their existence in the only spaces available).

²⁷⁵ Tom Koch & Ken Denike, *Geography: The Problem of Scale, and Process or Allocation: The U.S. National Organ Transplant Act of 1986, Amended 1990*, in LAW & GEOGRAPHY, *supra* note 266, at 109, 122–23, 127–29.

²⁷⁶ Erik Luna, *Transparent Policing*, 85 IOWA L. REV. 1107, 1177–1193 (2000) (conducting spacial analysis of drug arrests along the north coast of San Diego County, California).

²⁷⁷ Robert J. Goldstein, *Putting Environmental Law on the Map: A Spatial Approach to Environmental Law Using GIS*, in LAW & GEOGRAPHY, *supra* note 266, at 523, 536–37.

²⁷⁸ See Joe T. Darden, *Lending Practices and Policies Affecting the American Metropolitan System*, in THE AMERICAN METROPOLITAN SYSTEMS: PRESENT AND FUTURE 93 (Stanley D. Brunn & James O. Wheeler eds., 1980); Steven R. Holloway, *Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio*, 88 ANNALS ASS'N. AM. GEOGRAPHERS 252 (1998); Michael Reibel, *Geographic Variation in Mortgage Discrimination: Evidence from Los Angeles*, 21 URBAN GEOGRAPHY

convinced Congress that in some specific neighborhoods and communities, banks accepted deposits but did not give out equivalent amounts in loans—a process sometimes called “disinvestment.”²⁷⁹ Accordingly, Congress adopted the Community Reinvestment Act (CRA) requiring that depository institutions make efforts to lend in low- and moderate-income neighborhoods within the contiguous geographic area surrounding their office or group of offices.²⁸⁰ Finally, there is compelling evidence suggesting that check cashers, pawnshops, and payday lenders all disproportionately locate their branches in poor and minority neighborhoods.²⁸¹

Our current Article draws on and expands this law and geography literature. Our empirical investigation explores what lessons the spatial relationship between payday lending operations and military personnel might hold for today’s policy makers. In particular, this Article seeks to provide a definitive resolution to the national debate over whether payday lenders target military service members. Payday lenders, like most businesses, carefully locate near their targeted customers. For instance, in its Securities and Exchange Commission filing, one national lender disclosed that its stores are located within three miles of their intended market.²⁸² Accordingly, mapping payday lender locations can reliably determine the extent to which payday lenders target military personnel.

45 (2000).

²⁷⁹ *Community Credit Needs: Hearings on S. 406 Before the S. Comm. on Banking, Housing, and Urban Affairs*, 95th Cong. 17 (1977); S. REP. NO. 95-175, at 33 (1977); Robert G. Boehmer, *Mortgage Discrimination: Paperwork and Prohibitions Prove Insufficient—Is It Time for Simplification and Incentives?*, 21 HOFSTRA L. REV. 603, 622 (1993).

²⁸⁰ 12 U.S.C. § 2903 (2000). Under the CRA, banking regulators are required to conduct periodic law and geographic analyses of depository institutions potentially denying permission to merge or open new branches to institutions receiving poor evaluations. See Jonathan R. Macey & Geoffrey P. Miller, *The Community Reinvestment Act: An Economic Analysis*, 79 VA. L. REV. 291, 300–01 (1993) (describing this process).

²⁸¹ Steven M. Graves, *Landscapes of Predation, Landscapes of Neglect: A Location Analysis of Payday Lenders and Banks*, 55 PROF. GEOGRAPHER 303, 312 (2003) (studying payday lender location patterns in urban Illinois and Louisiana); KENNETH TEMKIN & NOAH SAWYER, FANNIE MAE FOUNDATION, ANALYSIS OF ALTERNATIVE FINANCIAL SERVICE PROVIDERS 11–26, http://www.fanniemae.foundation.org/programs/pdf/021904_altfin_servproviders.pdf (last visited Oct. 17, 2005) (studying check casher, pawnshop, and payday lender location patterns in Chicago, Atlanta, Houston, Kansas City, Los Angeles, Miami, Memphis, and Washington, D.C.).

²⁸² Payday lenders themselves candidly admit that they take great pains to find locations close to their target demographic. See, e.g., Check Into Cash, Inc., Registration Statement Form S-1, at 33 (July 31, 1998), <http://www.sec.gov/Archives/edgar/data/1067289/0000931763-98-001978.txt> [hereinafter Check Into Cash S-1 Registration Statement] (explaining importance of proximity of store location to target market).

Moreover, if payday lenders do target service members, we consider the extent to which various state legal environments have held this targeting in check. Specifically, we ask what legal approaches, if any, have demonstrated promise in preventing targeting of military personnel for triple-digit interest rate payday loans.

B. Empirical Methodology

1. Study Overview: Sample, Scales of Resolution, and Control Group

Our study analyzes the locations of payday lenders in 20 states. We chose our sample of states based on several criteria. First and foremost, we looked for states that are home to what might best be described as “military towns.” By this we mean places where military personnel are the clear consumer demographic, due to either the large population of the military base, the small size of the surrounding communities, or both. Studying payday lender outlet locations in these areas reduces the chance that observed commercial retail patterns would be unduly affected by other demographic variables, such as race or poverty. Second, we sought to analyze military bases in states with a wide variety of legislative and regulatory strategies for addressing payday lending issues. This was necessary to discover whether variation in state regulation created any demonstrable effect on the spatial relationship of payday lenders and military installations. Accordingly, in some cases we also considered states with military installations where military personnel are a less predominant component of local business demographics. Third, we attempted to include states with bases of special military importance as well as bases from all the branches of the armed forces. Thus, San Diego, California and the Greater Norfolk, Virginia regions were included because of the significant military population residing in those locales, despite the potential for causal noise from their large coextensive civilian populations. States with little or no military presence were not included in our study.

For each of these 20 states, we attempted to construct maps and statistical analyses based on four levels of geographic resolution. First, for each state we made several generalizations about the intensity of payday lending in that state as compared to others. Second, we conducted countywide statistical analyses. County-level analysis enables comparison of the distribution and density of payday lenders within a state, and it provides an important scale by which to examine industry density locations relative to military installations. Because military bases are often as large as counties themselves and may have several scattered off-base retail and service districts, the county-level resolution sometimes catches concentrations that disappear at more local scales. Third, we

analyzed every ZIP code region in each of the 20 states.²⁸³ Maps at this scale are especially useful because ZIP code regions frequently replicate the market range and threshold parameters used by site location analysts who very likely figure heavily into the final location of banks and payday lenders.²⁸⁴ In other words, most local ZIP code regions contain those consumers whom payday lenders operating in that ZIP code hope to attract. And fourth, several military installations were chosen as focal points for more detailed, street-level case analyses of payday lending. At this “neighborhood” scale, specific street addresses were mapped for an entire county or counties in which the base(s) is located. Not only does this allow us to know the absolute location of payday lenders throughout a county, but it also allows us to track the distance from base gates and service member quarters.

To further refine the validity of our study, we also mapped all bank and bank branch locations in all 20 states. The bank control group allowed us to compare the number of payday lenders with the number of banks in a given state, county, ZIP code region, or neighborhood. And mapping banks also allowed us to compare the distance separating payday lenders and military bases with the distance separating banks and military bases. These comparisons are important because they provide spatial context, giving us something of a barometer of commercial activity in an observed locale. Mapping banks also helps account for variations in zoning regulations. For example, it is theoretically possible that current or past zoning ordinances might force payday lenders into geographic areas in close proximity to military bases, even though military personnel are not making relatively greater use of payday lender services. This becomes a much less plausible explanation of payday lender locations if payday lenders are clustered near military bases, but banks, who face similar zoning rules, are not. By mapping banks, we gain some insight into where retail and service activity is permissible in the towns and cities we are analyzing and get a good idea of where consumers are likely to be found.

²⁸³ Matching addresses to ZIP code polygons is highly reliable, and over 98% of all addresses used in the study reported a ZIP code that could be located and placed on a map. Banks and payday lenders reporting a point location, such as those assigned a university, mall, or P.O. Box address, were assigned the ZIP code region containing the ZIP code point in question. Less than two percent of the addresses were reported as points.

²⁸⁴ Range refers to the distance a consumer will travel to obtain a good or service. Threshold refers to the minimum population necessary to maintain solvency for a given business. Location analysts commonly conduct geographic market range and threshold parameter studies on behalf of businesses seeking locations and forming business plans. See DEAN M. HANINK, *PRINCIPLES AND APPLICATIONS OF ECONOMIC GEOGRAPHY: ECONOMY, POLICY, ENVIRONMENT* 247 (1997) (discussing theoretical issues in market range evaluation).

2. Data Sources and Mapping Techniques

To complete our study, we required four types of data: population information, military base locations, bank locations, and payday lender locations. All civilian population information was obtained from the U.S. Census Bureau.²⁸⁵ The absence of an authoritative reliable source for military population made analysis requiring this information somewhat more problematic. Because military personnel are frequently being deployed, reassigned, trained, and moved, many of the bases we contacted were unable to give us reliable manpower figures. After consulting with representatives from the Department of Defense (DOD), we selected the DOD's annual *Base Structure Report* of 2004 as our primary databank.²⁸⁶ Data regarding personnel was cross-referenced with a report published by the DOD's Statistical Information Analysis Division²⁸⁷ as well as with the data from the Census Bureau.

Data on military base locations in general is widely available. However, the precise boundaries of military bases are sometimes ambiguous. In delineating base boundaries, we primarily relied on maps issued by the United States Geologic Survey (USGS) and published by the Environmental System Research Institute (ESRI). However, we found several instances where USGS maps did not match maps created by either the U.S. Department of Transportation or other private digital map vendors. Discrepancies in base location were resolved via telephone calls to information offices at individual bases. Many bases are large and include multiple parcels of land, sometimes flung over several counties. Where this was the case, the ZIP code region(s) containing the base headquarters and the majority of on-base housing was used to delineate the boundaries of the military installation under consideration.

While bank and bank branch addresses were easily obtained from the Federal Deposit Insurance Corporation (FDIC),²⁸⁸ obtaining reliable data on payday lender locations proved more challenging. We obtained the addresses of payday

²⁸⁵ See United States Census Bureau, Census 2000 Summary File 3, <http://www.census.gov/Press-Release/www/2002/sumfile3.html>.

²⁸⁶ See DEPARTMENT OF DEFENSE, BASE STRUCTURE REPORT (2004), http://www.defenselink.mil/pubs/20040910_2004BaseStructureReport.pdf. According to officials in this office, this data was submitted to the DOD by officials on base.

²⁸⁷ Department of Defense, Directorate for Information Operations and Reports, Statistical Information Analysis Division, Distribution of Personnel by State and by Selected Locations, <http://web1.whs.osd.mil/mmids/pubs.htm> (last visited Oct. 17, 2005). According to officials in this office, this data was collected through payroll records.

²⁸⁸ Federal Deposit Insurance Corporation, Find an Institution, <http://www2.fdic.gov/idasp/main.asp> (last visited Oct. 17, 2005). The FDIC recognizes several different categories of banks. For our purposes, we included all branch locations irrespective of the FDIC's categories.

lenders from the state regulatory authority charged with oversight of payday lenders in all but three states included in the study. In most instances, regulatory oversight offices host a website where the addresses of payday lenders can be downloaded; several other states sent lists of payday lenders via electronic mail or as paper copies via U.S. Postal Service. Though we believe the individual licensing agencies are the best source for addresses, we do not believe they are comprehensive. Ample anecdotal evidence suggests that many payday lenders operate without a license from the state. We were able to phone several payday lenders listed in local telephone directories that were not licensed or included on the list of payday lenders provided by various states. Conversations with state authorities and other industry observers confirmed our observations.²⁸⁹

Though incomplete, we are confident that the lists provided by the states do include businesses engaged in the business of payday lending. To that end, each regulatory authority was contacted in order to ensure that the criteria used to define "payday lender" in our study was consistent from state to state. In three states vital to our survey—New York, North Carolina, and Texas—we could not obtain adequate data from state regulators, and accordingly we used alternative data gathering strategies. Our data collection methods for these three states are elaborated in Part IV alongside discussions of the law and empirical findings in those states.

In terms of mapping technique, we used commercial mapping software to map the addresses of individual payday lender and bank locations onto TIGER centerline files.²⁹⁰ Using these files, we are able to enter a database of addresses into mapping software that places points on street maps indicating the location of each address. For each case study location, a minimum 75% match rate was achieved; but in most cases, especially for payday lenders, match rates of over 90% were realized, giving us reliable sample sizes and excellent statistical confidence.²⁹¹ Matched addresses were randomly checked for accuracy by cross-

²⁸⁹ Telephone conversations with several state officials and other industry analysts confirmed our suspicion that there are many unregulated payday lending operations in each state. Telephone Interview with Jennifer Delacamp, Lawton Area Supervisor, Consumer Credit Counseling of Oklahoma (Jan. 2005). Independent of the conclusions of this Article, it is troubling that some payday lenders simply have refused to acknowledge the authority of state regulators by openly disregarding state licensing requirements.

²⁹⁰ TIGER Line files are the basis for street and road maps used by many government agencies. *See, e.g.*, KANG-TSUNG CHANG, INTRODUCTION TO GEOGRAPHIC INFORMATION SYSTEMS 308 (2002) (describing TIGER/Line files). Our maps were created using the Geocode function in ESRI's ArcMap 9.0 software, a common professional geography computer program which allows users to compile, author, analyze, map, and publish geographic information. *See* Environmental System Research Institute, What is ArcGIS?, <http://www.esri.com/software/arcgis/about/overview.html> (last visited Oct. 17, 2005).

²⁹¹ *See* GARETH SHAW & DENNIS WHEELER, STATISTICAL TECHNIQUES IN GEOGRAPHICAL ANALYSIS 48–53 (2d ed. 1994) (describing statistical significance in mapping match rates).

referencing matched locations with several widely available on-line address-matching services.²⁹²

3. *Statistical Analysis of Payday Lender Location Density*

Maps were analyzed using simple, widely-understood statistical measures in hopes that the findings would be transparent to the widest possible audience. At the county and ZIP code levels, three basic measures of payday lending were employed. The first was the total number of payday lenders per geographic region. The second was payday lenders per capita, generally expressed in terms of payday lenders per 100,000 persons. The third measure we used is a measure of payday lending density relative to banking density. Professional geographers have a variety of commonly accepted methods for measuring relative location density of two business types. Most geographers typically use a standard business density formula known as a "location quotient."²⁹³ In calculating payday lender density relative to banks, we used statistically acceptable variations on the standard location quotient formula tailored to capture subtle differences in payday lender and bank density for our county and ZIP code level analyses.²⁹⁴

²⁹² See, e.g., Environmental System Research Institute, ArcWeb Showcase: Map Viewer Application, <http://arcweb.esri.com/sc/viewer/index.html> (last visited Oct. 17, 2005); Google Maps, <http://maps.google.com> (last visited Oct. 17, 2005); Mapquest, Mapping Service, <http://www.mapquest.com/> (last visited Oct. 17, 2005); Yahoo Maps, <http://maps.yahoo.com> (last visited Oct. 17, 2005).

²⁹³ Location quotient is the most frequently used statistic to determine a region's share of some business activity. One standard location quotient formula is:

$$LQ = \frac{\frac{\sum X_i}{\sum X}}{\frac{\sum Y_i}{\sum Y}}$$

where LQ is the location quotient, X and Y are the businesses in question, and i is the geographic location, such as a ZIP code or a county. SHAW & WHEELER, *supra* note 291, at 313. However, an in-depth discussion of analytic statistical geography is beyond the scope of this Article. For an excellent introduction to this topic, see generally JAMES E. BURT & GERALD M. BARBER, *ELEMENTARY STATISTICS FOR GEOGRAPHERS* (2d ed. 1996).

²⁹⁴ The standard location quotient formula is not appropriate for this study, given the data limitations inherent in tracking payday lending locations. Because there are many ZIP codes with no payday lenders, the standard formula is not suited to measuring this industry. Modifying this formula allows us to use the data we have available to include those areas without payday lenders, instead of tossing them aside, and to see subtle differences between two areas with identical ratios of banks to payday lenders but with different numbers (volume) of banks and payday lenders. In the alternative, we conducted experiments with numerous formulaic variations and produced nearly identical results. We selected a very simple county level ratio:

Next, we ranked each of these three statistical measures against their intrastate counterparts, with the lowest rank (first) in each category assigned to the county or ZIP code with the highest score on each variable. So, for example, the county with the highest total number of payday lenders would therefore receive a rank of first in that category. Similarly, the ZIP code region with the highest relative density of payday lenders in comparison to banks would receive the first place ranking for that category. Finally, the ranks for all three categories were averaged together to produce a *composite index* for each scale level. Because the composite index is a function of our three measured categories, the lowest ranked counties and ZIP code regions will generally feature a relatively large number of payday lenders, a relatively high density of payday lenders per capita, and a relatively high ratio of payday lenders to banks. These composite index scores were also assigned ranks with the highest composite index score again receiving the first place ranking. Importantly, our composite index scores create an opportunity to express the proximity of the payday lending industry as a whole in any given county or ZIP code to military bases with a single, easily comparable number.

In order to give us some perspective on the per capita density of payday lenders in any unit of analysis, such as a ZIP code, we calculated the statewide average for payday lenders per 100,000 people. By multiplying the statewide average by the population in smaller-area units, such as a ZIP code, we were able to predict the number of payday lenders that *should be* in that unit of analysis, if it were to conform to the statewide average.²⁹⁵ Finally, we compared our

$$LQ = \left(\frac{X}{Y} \right) \times 100$$

where LQ is the location quotient, X are payday lenders, and Y are banks. For ZIP code regions, our relative measurement of payday lender to bank density needed additional refinement to account for the great number of ZIP codes without banks, payday lenders, or either. Once again, after numerous experiments, we selected the following formula which distinguishes ZIP code regions that have identical ratios payday lenders and banks, but have different absolute numbers of bank and payday lenders. Our ZIP code region formula is:

$$LQ = \left[\frac{X}{(X + Y) \times 100} \right] + (X - Y)$$

where, once again, LQ is the location quotient, X are payday lenders, and Y are banks. We believe these formulas provide the best opportunity to see subtle differences in the density of payday lending (relative to banks) among counties and ZIP codes in each state. Moreover, they are well within traditionally accepted geographic methodology. SHAW & WHEELER, *supra* note 291, at 313–15.

²⁹⁵ The formula we used to determine the expected number of payday lenders is:

prediction, or “expected” number, of payday lenders against the actual number of payday lenders observed in each geographic unit. This allowed us to accurately characterize the actual number of payday lenders as being in excess of, equal to, or below the statewide per capita average for any given regional population.

For those bases mapped at the neighborhood level, we analyzed data in a manner we hoped would show differences in the prevalence of payday lending close to and far away from a given base. In these analyses we adopted two spatial categories: neighborhoods were “near” a base when they were located within a three-mile radius of the base, while “distant” neighborhoods were outside the three-mile zone. We chose the three-mile radius following the industry’s own commonly agreed-upon store location goals.²⁹⁶ In several maps presented later, we used mapping software to draw buffer zones one, two, and three miles around each base. Then we counted the number of people, payday lenders, and banks both within and outside the three-mile buffer zone.²⁹⁷ “Near base” census tracts could then be statistically measured against those outside the three-mile buffer. Near base tracts could also be measured against countywide and statewide averages. Statistical measures employed at the neighborhood level included the absolute number of payday lenders and banks and the density of payday lenders and banks per capita. These near base statistical analyses provide a useful quantitative snapshot of the landscape immediately surrounding military service members.

$$X = \left(\frac{\sum L}{\sum P} \right) \times p$$

where X is the expected number of payday lenders in a given county, ZIP code, or other geographic region; L is all payday lenders statewide; P is the population statewide; and p is the population of the county, ZIP code, or other geographic region in question.

²⁹⁶ For example, Check Into Cash explained its store location threshold in an SEC filing:

Management believes that most consumers reside within a five-mile radius of the store that they visit and that the convenience of a store’s location is extremely important to customers. As a result, management seeks to open each new store within three miles of the market area that it is intended to serve.

Check Into Cash S-1 Registration Statement, *supra* note 282, at 33.

²⁹⁷ We estimated population totals within each buffer zone by summing the population of all census tracts with a centroid point inside the selected buffer zone.

IV. RESULTS: THE LAW AND GEOGRAPHY OF MILITARY PAYDAY LENDING JUXTAPOSED

A. Federal Banking Law and the Marquette Doctrine: A Backdrop to American Payday Lending

The law and geography of payday lending to military personnel in individual states cannot be understood without an appreciation of federal banking law in general and the landmark case of *Marquette National Bank v. First Omaha Service Corp.* in particular.²⁹⁸ The *Marquette* decision interpreted a Civil War era congressional statute called the National Bank Act.²⁹⁹ When Congress passed the National Bank Act in the 1860s, states and the federal government were competing aggressively for regulatory and tax control over the emerging American banking industry.³⁰⁰ Banks could (and still can) receive their charters either from state governments or from the federal government.³⁰¹ Both the states and the federal government were actively encouraging banks to choose charters from their own level of government.³⁰² In order to entice banks to charter at the state level, some states passed laws allowing state banks to charge higher interest rates than federal chartered banks lending within that state's borders.³⁰³ Claiming unfair discrimination against federally chartered banks, and fearing encroachment on its tax and regulatory power, Congress drew on its authority under the Commerce Clause of the U.S. Constitution to prohibit states from authorizing higher permissible interest rate caps for state banks than for federal banks.³⁰⁴

Over a hundred years later, the growing credit card industry in the 1970s

²⁹⁸ *Marquette Nat'l Bank v. First Omaha Serv. Corp.*, 439 U.S. 299 (1978).

²⁹⁹ *Id.* at 310 n.23.

³⁰⁰ James J. White, *The Usury Trompe l'Oeil*, 51 S.C. L. REV. 445, 450 (2000).

³⁰¹ Elizabeth R. Schiltz, *The Amazing, Elastic, Ever-Expanding Exportation Doctrine and Its Effect on Predatory Lending Regulation*, 88 MINN. L. REV. 518, 540 (2004).

³⁰² White, *supra* note 300, at 450.

³⁰³ See, e.g., *Tiffany v. Nat'l Bank of Missouri*, 85 U.S. (18 Wall.) 409, 411 (1873) (discussing state law which provided an eight percent interest rate cap for state banks and a ten percent cap for all other lenders).

³⁰⁴ The statute, now referred to as section 85 of the Act, allows national banks to charge:

interest at the rate allowed by the laws of the State, Territory, or District where the bank is located . . . and no more, except that where by the laws of any State a different rate is limited for banks [of issue] organized under State laws, the rate so limited shall be allowed for [national banks] organized or existing in any such State

National Bank Act, ch. 106, § 30, 13 Stat. 99, 108 (1864) (codified as amended at 12 U.S.C. § 85 (2000)).

forced the Supreme Court to face a novel question. The issue was which state's interest rate cap applies when a bank located in one state loans money across borders at an interest rate in excess of the state interest rate cap where the borrower lives. The *Marquette* Court held that the National Bank Act—which originally leveled the playing field between federal and state banks—now authorized federally chartered national banks to *export* the interest rate cap (or lack thereof) of a bank's home state to consumers in other jurisdictions.³⁰⁵

The Supreme Court's intervention in what had been state lawmaking was the starting gun in a corporate race to the bottom that significantly eroded the power of state governments to set meaningful interest rate caps.³⁰⁶ Lenders quickly relocated in states with no interest rate caps such as Delaware and South Dakota and exported those laws to states that chose more aggressive price regulation.³⁰⁷ States with interest rate caps became much more amenable to removing them in order to hold on to their financial services industry jobs.³⁰⁸ Because the *Marquette* decision only applied to national banks, state chartered banks were at a significant competitive disadvantage.³⁰⁹ Bowing to pressure by state banks, Congress included language in the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA) that allowed state banks to charge interest at the rate allowed by the laws of the state where the bank is located.³¹⁰ Section 521 of this act granted exporting powers to state banks similar to those of national banks.³¹¹

The extent to which the *Marquette* decision (for national banks) and § 521 of DIDMCA (for state banks) applies to payday lending currently remains in flux. Payday lenders, at least some of whom have always sought new ways to circumvent state interest rate caps, began attempting to use the *Marquette* exporting doctrine to their advantage in the 1990s.³¹² In general, banks were unwilling to risk their own reputations by offering triple-digit interest rate loans out of their own branch lobbies in their own communities. However, a small minority of banks were willing to form business relationships to make payday loans through storefront payday companies usually located in other states. In

³⁰⁵ *Marquette Nat'l Bank v. First Omaha Serv. Corp.*, 439 U.S. 299, 310–12 (1978).

³⁰⁶ William F. Baxter, *Section 85 of the National Bank Act and Consumer Welfare*, 1995 UTAH L. REV. 1009, 1010–11; Schiltz, *supra* note 301, at 619–20.

³⁰⁷ White, *supra* note 300, at 447–48.

³⁰⁸ *Id.* at 454.

³⁰⁹ Schlitz, *supra* note 301, at 565–66.

³¹⁰ Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221, § 521, 94 Stat. 132 (1980) (codified at 12 U.S.C. § 1831(d)(a) (2004)).

³¹¹ *Hill v. Chemical Bank*, 799 F.Supp. 948, 951 (D. Minn. 1992) (“Congress enacted § 521 to create parity between national and state banks with respect to usury limitations.”).

³¹² CONSUMER FEDERATION OF AMERICA & U.S. PUBLIC INTEREST RESEARCH GROUP, *supra* note 153, at 12–15.

these transactions, which have become standard in the industry, the payday loan company manages marketing, staff, locations, customer service, and loan applications, but the bank advances the loan funds to borrowers. On paper, every loan is “made” by the bank, but the name on the door is that of the payday loan company, and the only person the borrower ever sees is an employee of the payday lender.³¹³ By prior agreement, the payday loan company usually then immediately purchases the right to receive payment from consumers back from the bank.³¹⁴ Then, the payday loan company goes on to handle the most important aspect of the business: collections. The bank, in effect, “rents” its charter powers under the *Marquette* doctrine or § 521, either in exchange for a per loan fee or for ownership in a small percent of the proceeds of each loan.³¹⁵ The entire point of the business relationship is to circumvent interest rate caps adopted by state legislatures.³¹⁶

Not surprisingly, many bankers and bank regulators were extremely uncomfortable with these “charter-renting” relationships. In 2002, the Office of the Comptroller of the Currency (OCC) used its oversight powers over federally chartered banks to crack down on charter-renting. Speaking on the *Marquette* doctrine, the Comptroller of the Currency explained:

Let me raise one . . . caution The benefit that national banks enjoy by reason of this important constitutional doctrine cannot be treated as a piece of disposable property that a bank may rent out to a third-party that is not a national bank. Preemption is not like excess space in a bank-owned office building. It is an inalienable right of the bank itself.

. . .

Indeed, the payday lending industry has expressly promoted such a “national bank strategy” as a way of evading state and local laws. Typically, these arrangements are originated by the payday lender, which attempts to clothe itself with the status of an “agent” of the national bank.

. . .

Not only do these arrangements constitute an abuse of the national charter, but they are highly conducive to the creation of safety and soundness problems at the bank, which may not have the capacity to manage effectively a multistate

³¹³ Letter from Carlene McNulty, North Carolina Justice and Cmty. Dev. Ctr., to Joseph A. Smith, Jr., North Carolina Banking Comm’n 2 (Nov. 9, 2004) (on file with authors).

³¹⁴ Schiltz, *supra* note 301, at 583.

³¹⁵ *Id.* at 582–83.

³¹⁶ *Id.*

loan origination operation that is in reality the business of the payday lender.³¹⁷

Following this reasoning, one by one, the OCC gave negative oversight evaluations to every federally chartered bank involved in payday lending.³¹⁸ Under threat of losing their bank charters, all national banks terminated their charter-renting relationships with payday loan companies.

State-chartered banks have been a different story. Banks chartered by state governments are primarily regulated by that state's bank examiner or department of financial institutions. However, state-chartered banks also receive oversight from the Federal Deposit Insurance Corporation (FDIC), which is an independent federal agency created in 1933 in response to bank failures during the Great Depression.³¹⁹ State banks are under FDIC oversight because the banks purchase federal insurance from the FDIC to protect the bank accounts of their customers from theft and other losses. Unlike the OCC, the FDIC has turned a blind eye to charter-renting, taking the position that state bank charter-renting to payday loan companies is just as legal as the credit card loans made in the *Marquette* case.³²⁰ Consumer advocates have responded by furiously accusing the FDIC of undemocratically undermining every usury law in the nation.³²¹ But the FDIC, which has an institutional history and culture focused almost exclusively on preventing bank failures, has essentially ignored the consumer protection concerns of payday lending critics.³²² Thus, payday loan companies and state banks continue to claim a license to ignore state interest rate laws. Under this highly controversial interpretation of the law, so long as officials at the FDIC and *one* state government in the entire country refuse to prevent 450% loans, one state bank located in that one state may empower payday loan companies to export the state's law (or lack thereof) to *every borrower* in the country. Sheltered under this protective regulatory umbrella, twelve state banks of the more than 5200 institutions currently supervised by the FDIC continue to act as facilitators for many of the nation's payday loan companies.³²³

For their part, courts have not been able to agree on a definitive legal resolution as to whether banks and payday loan companies may use the

³¹⁷ John D. Hawke, Jr., Comptroller of the Currency, Remarks Before the Women in Housing and Finance (Feb. 12, 2002), <http://www.occ.treas.gov/ftp/release/2002-10a.txt>.

³¹⁸ FOX, UNSAFE AND UNSOUND, *supra* note 61, at 17–19.

³¹⁹ FEDERAL DEPOSIT INSURANCE CORP., WHO IS THE FDIC?, <http://www.fdic.gov/about/learn/symbol/index.html> (last visited Oct. 17, 2005).

³²⁰ FOX, UNSAFE AND UNSOUND, *supra* note 61, at 19–22.

³²¹ *Id.* at 29.

³²² By statute, the mission of the FDIC is to protect the safety and soundness of insured depository institutions. 12 U.S.C. §§ 1816, 1828(c)(1), 1831m-1, 1831p-1 (2005).

³²³ Press Release, Federal Deposit Insurance Corp., FDIC Revises Payday Lending Guidance (Mar. 2, 2005), <http://www.fdic.gov/news/news/press/2005/pr1905.html>.

Marquette doctrine to simply disregard state interest rate laws. Nevertheless, two trends have emerged. The first was cemented into place by *Beneficial National Bank v. Anderson*, where the Supreme Court held that state usury law does not bind national banks and “there is, in short, no such thing as a state-law claim of usury against a national bank.”³²⁴ However, *Beneficial* did not resolve the issue of the extent to which a bank may alienate its ability to ignore state usury law to other non-bank companies, such as payday lenders. On this issue, lower courts over the past few years have emphatically stated that while a bank may have the right to export interest rate laws, non-bank payday loan companies in a contractual relationship with a bank do not. At least nine courts have held that there is no federal preemption of usury claims where the victim alleges that a payday loan company is, in fact, making payday loans while using the name of a bank as a pretext to avoid state usury law.³²⁵ A federal district court in New York has gone so far as to hold that no federal legal issue exists where a state attorney general accuses a state bank of criminally aiding a payday loan company in committing criminal usury through a charter-renting arrangement.³²⁶ Thus, while banks may presently be free to avoid state usury law, it must, as a matter of economic fact, be the bank that makes and retains the risk on loans.³²⁷ As we

³²⁴ *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 11 (2003) (complete preemption doctrine required reversal of U.S. Court of Appeals order remanding state law usury claims to state court when brought against a national bank.)

³²⁵ *Long v. ACE Cash Express, Inc.*, No. 3:00-CV-1306-J-25TJC, 2001 U.S. Dist. LEXIS 24617, at *3–4 (M.D. Fla. June 18, 2001); *Brown v. ACE Cash Express, Inc.*, Civ. No. S-01-2674, 2001 U.S. Dist. LEXIS 25847, at *5–6 (D. Md. Nov. 14, 2001); *Colorado v. ACE Cash Express, Inc.*, 188 F. Supp. 2d 1282, 1284–85 (D. Colo. 2002); *Goleta Nat'l Bank v. Lingerfelt*, 211 F. Supp. 2d 711, 717 (E.D.N.C. 2002); *Goleta Nat'l Bank v. O'Donnell*, 239 F. Supp. 2d 745, 755–56 (S.D. Ohio 2002); *Flowers v. EZPawn Oklahoma, Inc.*, 307 F. Supp. 2d 1191, 1204–06 (N.D. Okla. 2003); *People v. County Bank of Rehoboth Beach*, 1:03-CV-1320 (N.D.N.Y. May 25, 2004), www.abanet.org/buslaw/committees/CL230044pub/links.shtml (subscription required); *Carson v. H&R Block, Inc.*, 250 F. Supp. 2d 669, 675 (S.D. Miss. 2003); *BankWest, Inc. v. Oxendine*, 598 S.E.2d 343, 347–48 (Ga. Ct. App. 2004).

³²⁶ The court stated:

[The bank's argument] would be relevant if the State in this case were asserting state law usury claims against County Bank. However, as stated above, the State's claims against County Bank include only allegations of criminal facilitation, fraudulent business conduct, and deceptive business practices, none of which is preempted by federal law.

People v. County Bank of Rehoboth Beach, 1:03-CV-1320, at 8 (N.D.N.Y. May 25, 2004), www.abanet.org/buslaw/committees/CL230044pub/links.shtml (subscription required).

³²⁷ One federal judge explained:

In this case . . . , [a]lthough Ace contends that Goleta is the real maker of the loans at issue, the state contends just the opposite: that Ace is using Goleta's name as mere

shall see in the next subsection, this subtle, fact specific, and still-evolving rule appears to have a significant impact on payday lending to military personnel in some states.

B. *State Law and Empirical Results*

In this section, we present our empirical findings regarding geographic location strategies of payday lenders. However, because our intention is not to provide mere geographic information, but also to explore the legal implications of that information, we present our empirical results alongside a description of the laws controlling payday lending in each state. Thus, for each state, we present a short summary of state payday lending law, a characterization of the prevalence and density of payday lending statewide, and brief descriptions of the patterns of payday lending found at the county and ZIP code resolutions near military installations. For those particularly significant military installations chosen for in-depth, street-level analysis, we include a short discussion of those findings where appropriate. We also provide maps to assist readers in visualizing payday lender location strategies.³²⁸

1. *Alabama*

Like many states, Alabama has a general usury law, which caps interest rates at eight percent and is riddled with exceptions for various types of lenders.³²⁹ In 2003, payday lenders successfully lobbied the Alabama legislature to enact the Deferred Presentment Services Act (DPSA). The statute authorizes the Alabama Bureau of Loans to grant licenses to payday lenders.³³⁰ Licensed payday lenders are allowed to charge “17.5% of the amount advanced.”³³¹ As a result, the Act

subterfuge for its own unlawful lending practices. Thus, a sharp factual issue is presented as to whether Goleta, a national bank, is the real lender at issue. If Ace is the de facto lender, then its payday loans may violate the North Carolina Check Casher Act

Goleta Nat'l Bank, 211 F. Supp. 2d at 717.

³²⁸ A complete presentation of our results and data is beyond the space limitations of this Article. However, complete records of our results are on file with the authors. Unless noted otherwise, all data is drawn from sources as explained in Section III.B, which describes our methodology. All annual percentage rate calculations were computed using the National Consumer Law Center's rate calculation software and assume a fourteen-day loan term. See KATHLEEN E. KEEST ET AL., *THE COST OF CREDIT: REGULATION AND LEGAL CHALLENGES* (2d ed. 2000 & Supp. 2004) (software disk accompanying treatise).

³²⁹ ALA. CODE §§ 8-8-1, 5-18-1 to 5-19-31 (2005); KEEST & RENAULT, *supra* note 328 at § 2.5.

³³⁰ ALA. CODE § 5-18A-3 (2005).

³³¹ *Id.* § 5-18A-12(a).

authorizes an effective APR of around 455%, one of the highest state payday loan interest rate caps in the country.³³² Loans made under the DPSA are limited to an amount of \$500,³³³ and their duration must be between ten and 31 days,³³⁴ although lenders may renew or extend the loan one time.³³⁵ Also, a lender is not supposed to make a new payday loan to pay off an old loan.³³⁶ However, the provisions discouraging this practice are relatively weak. The statute requires lenders to use a third-party private sector database to deny payday loan applications sought by borrowers with outstanding payday loans.³³⁷ However, lenders must only deny applications from borrowers who have over \$500 in outstanding payday loan debt,³³⁸ and referencing the third-party database is only required if such a database is “available.”³³⁹ Payday loan lenders are also supposed to display a schedule of all fees, charges, and penalties,³⁴⁰ and disclose to borrowers the total amounts of all fees and other costs that will or potentially could be imposed as a result of entering a deferred presentment transaction.³⁴¹

Under these laws, Alabama has seen an explosion in payday lending, becoming one of the states most densely populated with payday lenders in the nation. Today, payday loan companies are now nearly as common in Alabama as traditional banks. In 2004, Alabama was home to 1077 payday lenders and 1458 banks.³⁴² This is the highest payday lender-to-bank ratio of any state in our survey. Alabama also has the highest number of payday lenders per person, with over 24 for every 100,000 residents. To put this rate into some perspective,

³³² Assuming a loan term of fourteen days, a 17.5% fee equates to an effective annual percentage rate of about 455%. Although payday lenders could also operate under the authority of the Alabama Small Loan Act, *Id.* §§ 5-18-1 to 5-18-24, including its 36% annual interest rate, *Id.* § 5-18-15(a), lenders clearly prefer the generous interest rates authorized by the DPSA. Lenders also may charge a fee of \$30 for any bounced check. *Id.* §§ 5-18A-12(d), 8-8-15.

³³³ *Id.* § 5-18A-12(a).

³³⁴ ALA. CODE § 5-18A-13(c) (2005).

³³⁵ *Id.* § 5-18A-12(b).

³³⁶ *Id.* § 5-18A-13(n).

³³⁷ *Id.* § 5-18A-13(o).

³³⁸ *Id.*

³³⁹ *Id.* This provision of the Alabama statute originally required the state to establish a central database of payday loans, but local consumer advocates argue that a last-minute change to the provision severely weakened the legislation. ARISE CITIZENS' POLICY PROJECT, *HARD CASH: PREDATORY LENDING IN ALABAMA*, <http://www.alarise.org/Predatory%20lending%20fact%20sheet%2010-04.pdf> (last visited Oct. 17, 2005).

³⁴⁰ ALA. CODE § 5-18A-13(m) (2005).

³⁴¹ ALA. CODE § 5-18A-13(f) (Supp. 2004).

³⁴² State of Alabama Banking Department, ADPSA License Search, http://www.bank.state.al.us/ADPSA_licenses.asp (last visited Oct. 17, 2005).

consider Colorado, which has about 100,000 fewer people than Alabama, has 711 fewer payday lenders, but only 68 fewer banks.

As extraordinary as the density of payday lenders is in Alabama as a whole, several military areas nevertheless manage to stand out. Coffee County, which shares much of its eastern border with the Army's Fort Rucker, has the second highest density of payday lenders, based on our composite index measurement. As illustrated in Table 1, the 43,615 people living in Coffee County have only fourteen banks, but have 20 payday lenders. Even for Alabama, the density of payday lenders located near Fort Rucker is extremely high. By way of perspective, Coffee County has two more payday lenders than Ohio's blue-collar Lorain County, which has a population of 285,000 people, and the 43,615 people of Coffee County have two times the number of payday lenders as Fairfax County, Virginia, where almost one million people live. Other Alabama counties with large military installations, including Houston, Montgomery, Calhoun, Autauga, and Morgan counties, also show high payday lending location densities.

Table 1. Alabama: Top 27 Counties Ranked by Payday Lending and Selected Military Counties

Nearest Base(s)	County	Pop.	Bnks	PD	Lndrs	PD/100K	Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
	Marshall	82231	37	40	48.64	108.11			6	2	8	1	19.92	20.08
Fort Rucker	Coffee	43815	14	20	45.86	142.45			16	3	1	2	10.56	9.44
Fort Rucker	Hayden	38757	35	37	41.67	105.71			7	5	9	3	21.51	15.49
	Pike	29605	13	15	50.67	115.38			20	1	3	4	7.17	7.83
	DeKalb	64452	24	25	38.79	104.17			12	6	10	5	15.61	9.39
	Covington	37631	10	14	37.20	140.00			22	9	2	6	9.11	4.89
Maxwell AFB	Monterey	223516	73	63	30.42	93.15			3	15	16	7	54.14	13.86
Andersen AFB (active only)	Calhoun	112249	31	32	28.51	103.23			9	20	11	8	27.19	4.81
	Talladega	80321	19	21	26.15	110.53			15	22	5	9	19.46	1.54
	Cherokee	23988	8	9	37.52	112.50			33	7	4	10	5.81	3.19
Maxwell AFB	Autauga	43671	14	14	32.05	100.00			22	11	12	11	10.53	3.42
Mobile	Mobile	399843	103	98	24.51	95.15			2	27	16	11	96.85	1.15
	Tuscaloosa	164875	46	41	24.87	89.13			5	25	19	13	39.94	1.06
Redstone Arsenal	Morgan	111044	39	32	25.91	93.05			9	19	22	14	26.90	5.10
Chilton	Chilton	39593	11	12	30.31	109.09			27	16	7	14	9.59	2.41
Colbert	Colbert	54984	22	18	32.74	81.82			18	10	23	16	13.32	4.68
Fort Benning, GA	Russell	49756	18	15	30.16	95.75			20	17	17	17	12.05	2.95
Jefferson	Jefferson	662047	196	148	22.35	75.51			1	31	25	18	160.36	-12.36
Clarke	Clarke	27867	17	12	43.06	70.59			27	4	27	19	6.75	5.25
Dallas	Dallas	46365	10	11	23.72	110.00			30	29	6	20	11.23	-0.23
Butler	Butler	21399	9	8	37.38	88.89			37	8	20	20	5.18	2.82
Eglin AFB, FL	Escambia	38440	17	12	31.22	70.59			27	12	27	22	9.31	2.69
Etowah	Etowah	103459	28	23	22.23	82.14			13	33	21	23	25.06	-2.06
Redstone Arsenal	Madison	276700	79	53	20.96	73.42			4	38	26	34	67.02	-9.02
Limestone	Limestone	65676	14	14	21.32	100.00			22	36	12	25	15.91	-1.91
Eglin AFB, FL	Baytown	140415	70	35	24.93	50.00			8	24	41	26	34.01	0.99
Barbour	Barbour	29038	13	9	30.99	69.23			33	14	29	27	7.03	1.97
Maxwell AFB	Emery	65374	18	14	21.25	77.78			22	37	24	31	15.96	-1.96
Fort Rucker	Dale	49729	16	11	22.39	88.75			30	30	30	35	11.90	-0.90

Zip code regions reveal further evidence of high payday lender density near military installations. For example, the 9000 soldiers and civilian employees³⁴³ at the Army's Redstone Arsenal in Huntsville only have to travel a little more than a mile up General Patton Road before they run into the heaviest concentration of payday lenders in all of Alabama. Ranking first on our composite statistic is ZIP code 35816, which contains at least fourteen payday lenders, roughly ten more than one would expect based on Alabama's already high state average and the ZIP code's population of about 15,000 people.

Fifth in our payday lender composite density ZIP code ranking is 36201 in Anniston, home to Anniston Army Depot and Fort McClellan, a recently closed Army base. About 3500 people still work for the Department of Defense in Anniston, most of them in civilian capacities. Anniston (36201) has sixteen payday lenders and only nine banks. This is about eleven more payday lenders than statistically expected. In a pattern we shall see repeated elsewhere, many towns that have suffered the loss of a military base within the last fifteen years, though disposed of the economic benefit of the base, nevertheless retain a high density of payday lenders.

Enterprise, Alabama ranks ninth in the state on the list of payday lender density by ZIP codes with eighteen payday lenders for its 31,000 people and 5000 soldiers at nearby Fort Rucker. Daleville, the tiny town at the entrance to Fort Rucker, has only one payday lender. However, about twelve miles from Daleville, Dothan (ZIP 36303), where many Fort Rucker soldiers are likely to shop for goods and services, has 24 payday lenders, thereby giving it the third highest composite ZIP code density of payday lenders in Alabama.

Other high ranking ZIP codes in Alabama include Montgomery (36109) and Phenix City (36867). Montgomery, home to Maxwell Air Force Base (Gunter Annex), is ranked twelfth and is only a few miles from the main base. Phenix City, located across the river and about ten miles from Fort Benning, Georgia, ranks twentieth. Its fifteen payday lenders exceed the statistical expectation by 10.56, and many of these lenders are located on the road that leads to Fort Benning.

³⁴³ Statistical Analysis and Information Division, *supra* note 287.

Table 2. Alabama: Top 30 ZIP Codes Ranked by Payday Lender Density

Nearby Base	ZIP	Town or City	Payday Lenders	Exp. PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
Redstone Arsenal	35896	Highlandville	16	3.92	1	94.12	2	16	33	33
	35957	BOAZ	14	3.42	6	99.13	12	8	29	2
Ft. Rucker - 7 mi	36303	DOTHAN	24	7.13	13	78.24	2	16	33	3
	35476	NORTHPORT	14	1.71	8	198.02	12	2	44	4
Cisd Army Depot	36201	ANNISTON	16	5.23	9	74.14	6	19	39	5
	35214	BIRMINGHAM	14	5.30	5	63.99	12	28	25	6
	35215	BIRMINGHAM	25	11.22	11	53.95	1	45	21	7
	35661	MUSCLE SHOALS	15	3.71	10	97.94	10	9	55	8
Ft. Rucker	36330	ENTERPRISE	13	4.1	9	57.97	4	35	34	9
	35228	BIRMINGHAM	7	2.61	0	64.96	51	27	1	10
	35208	BIRMINGHAM	11	4.34	4	61.42	26	32	26	11
Wetzel AFB/Gunter	36907	MONTGOMERY	13	5.07	5	53.32	17	41	37	12
	35068	FULTONDALE	6	1.43	2	101.90	59	7	27	13
	35045	CLANTON	11	3.21	7	82.89	26	13	54	13
	36081	TROY	12	3.35	9	86.74	22	11	67	15
	36535	FOLEY	14	4.28	12	79.23	12	15	76	16
	36420	ANDALUSIA	10	4.07	5	59.51	30	36	38	17
	35601	DECATUR	23	8.45	20	65.95	3	26	75	17
	35967	FT. PAYNE	12	4.27	8	68.06	22	25	58	19
Ft. Benning GA - 5 mi	36867	PHENIX CITY	15	4.44	15	81.82	10	14	82	20
	36619	MOBILE	10	3.48	6	69.58	30	23	53	20
	36571	SARALAND	10	3.22	7	75.29	30	18	60	22
	35020	BESSEMER	16	7.70	10	50.30	6	55	51	23
	35611	ATHENS	14	5.54	11	61.26	12	34	69	24
	35950	ALBERTVILLE	12	4.18	11	69.60	22	21	81	25
Wetzel AFB/Gunter	36907	MONTGOMERY	13	5.07	0	52.55	73	51	2	26
	36116	MONTGOMERY	16	9.43	10	41.11	6	76	51	27
	36801	OPELIKA	13	5.14	13	61.27	19	33	82	28
	36604	MOBILE	6	2.83	2	51.36	59	54	27	29
	35960	CENTRE	6	2.30	4	63.30	59	30	59	30

2. Arizona

Arizona's payday lending legislation is similar to Alabama's. Payday lenders who are licensed with the state may charge a "fee" of 15% of the face amount of a borrower's check, which is the equivalent of an annual interest rate of about 459%.³⁴⁴ Licensed payday lenders are permitted to extend a payday loan up to three times, and the lender may assess a new 15% fee each time.³⁴⁵ The statute also prohibits borrowers from entering into more than one payday loan transaction at the same time. However, there is little or no guarantee that payday lenders will actually comply with these time and volume limits. The statute merely instructs lenders to "take reasonable measures to ensure that no customer has more than one deferred presentment loan outstanding at any time with any" payday loan lender in Arizona.³⁴⁶ However, all the lender must do to comply with the rule is *ask* every borrower whether he or she has loans with other lenders, and the lender can rely on the borrower's answer in order to satisfy the statute's requirements.³⁴⁷

Under this law, Arizona has developed approximately 538 payday lenders and 1056 banks for its 5.1 million people.³⁴⁸ These figures place Arizona toward the middle of the states in our survey in terms of the density of payday lending per capita at 10.5 per 100,000. There are four mid-sized military installations in the state, three of which are air stations. Unlike most states, Arizona is divided into only fifteen relatively large counties. These large counties make it difficult to

³⁴⁴ ARIZ. REV. STAT. ANN. § 6-1260(F) (Supp. 2004). Section 6-1260(H) states that a payday lender fee is "not interest" for purposes of any other Arizona state law. *Id.* § 6-1260(H). This attempt at redefining the concept of interest is at odds with any coherent notion of commercial reality, as well as with a standard interpretation of the federal Truth in Lending Act. *White v. Check Holders, Inc.*, 996 S.W.2d 496, 500 (Ky. 1999) (holding deferred check presentment fees should be "interest" for purposes of state usury law); *Smith v. Cash Store Management, Inc.*, 195 F.3d 325 (7th Cir. 1999) (applying TILA to deferred presentment check cashing). A fee of 15% of the face amount of the check allows a lender to charge \$17.65 for every \$100 loaned (i.e., if a borrower desired to borrow \$100, he or she would need to write a check for \$117.65). Assuming a loan duration of fourteen days, a fee of \$17.65 is the equivalent of an APR of 459%.

³⁴⁵ ARIZ. REV. STAT. ANN. § 6-1260(I) (Supp. 2004). The lender may also charge a bad check fee of \$25 in addition to any charge assessed by the financial institution that dishonored the check. *Id.* §§ 6-1259(B)(10).

³⁴⁶ *Id.* § 6-1259(B)(10).

³⁴⁷ *Id.* § 6-1260(C).

³⁴⁸ For Arizona payday lender data, see OFFICIAL WEBSITE OF THE ARIZONA STATE BANKING DEPARTMENT, DEFERRED PRESENTMENT COMPANIES, http://www.azbanking.com/Lists/DPC_List.HTML (last visited Oct. 17, 2005).

draw generalizations about payday lender proximity to military bases.³⁴⁹

Nevertheless, at the ZIP code level, a more workable analysis is possible. As illustrated in Table 3, two sites of interest are Luke Air Force Base in Phoenix and the recently closed Williams Air Force Base in Mesa. In the ZIP codes adjacent to Luke A.F.B., we found only a few banks and zero payday lenders. Yet, about ten miles from the base is the ZIP code with the worst payday lending rank in the state. Although the former Williams A.F.B. area exhibits a similar pattern with very little activity near the base, the second worst ZIP code in the state is located about ten miles down the freeway.

This same pattern shows up in several Air Force bases in our survey. We speculate that, due to security concerns and the noise associated with military jet aircraft, the distance between Air Force bases and the surrounding commercial-retail districts is, on average, a few miles greater than it is at bases affiliated with other branches of the military. We have also noticed that Air Force personnel seem to have a more diffused housing pattern than service persons in the other branches of the Armed Forces and tend to live further from the base.

Davis-Monthan Air Force Base in Tucson is not as isolated from its local commercial districts as are the Luke and the former Williams bases. The 6000 airmen and support personnel associated with the base are located next to two ZIP codes (85713 and 85714) that together have at least eighteen payday lenders and nine banks. These ZIP codes rank fifth and tenth worst for the greatest density of payday lenders by ZIP code in Arizona. Based on the combined population of these ZIP codes, there are twelve more payday lenders than one would expect based on statewide averages.

The Army's Fort Huachuca (5000 troops) near the Mexican border is relatively free of payday lending. Yet the neighboring town of Sierra Vista has eight banks and five payday lenders. Although this is nearly double the number of payday lenders than one would predict based on the town's population, it hardly seems impressive considering the densities near other bases.

³⁴⁹ For example, in Maricopa County, the most populous county in the state and home to Luke Air Force Base, we identified 347 payday lenders and 660 banks. While this is a large aggregate number, given that there are over three million people in the county, the number and density of payday lenders is outstanding compared to other large metropolitan counties. The size of the county does not permit an inference as to whether or not the payday lenders in the state are targeting military personnel.

Table 3. Arizona: Top 30 ZIP Codes Ranked by Payday Lender Density

Nearby Base	ZIP	Town or City	Payday Lenders	Exp. PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
Luke AFB -10 mi Cisd Williams AFB-10 mi	85031	PHOENIX	11	2.89	3	39.80	9	2	9	1
	85202	MESA	15	4.58	8	33.99	1	5	16	2
85014	PHOENIX	9	2.84	1	32.91	17	7	8	3	
	85017	PHOENIX	11	3.94	4	29.02	9	17	11	4
Davis-Monthan AFB Luke AFB -7 mi	85733	TUCSON	13	4.63	7	38.77	3	18	17	5
	85033	PHOENIX	13	6.33	6	25.34	5	22	14	6
85201	MESA	14	4.95	9	29.40	2	15	24	6	
	85301	GLENDALE	14	5.98	8	24.34	2	26	20	8
85040	PHOENIX	9	2.94	6	31.75	17	9	25	9	
Davis-Monthan AFB Cisd Williams AFB-6 mi	85724	TUCSON	9	6.24	2	38.43	62	3	13	10
	85204	MESA	14	6.91	8	21.06	2	35	20	10
Luke AFB -10 mi	85302	GLENDALE	11	3.85	11	29.70	9	14	37	12
	85051	PHOENIX	9	4.31	3	21.71	17	33	10	12
85023	PHOENIX	10	3.56	8	29.19	13	16	32	14	
86442	BULLHEAD CITY	9	3.09	8	30.21	17	11	36	15	
85021	PHOENIX	10	4.01	8	25.92	13	20	32	16	
85535	EDEN	2	0.01	0	2597.40	67	1	2	17	
85381	PEORIA	6	2.35	3	26.57	33	19	18	17	
Cisd Williams AFB-10 mi	85210	MESA	9	3.78	7	24.65	17	28	29	19
	85211	MESA	10	3.78	7	24.65	17	28	29	19
85621	NOGALES	7	2.38	7	30.54	28	10	37	21	
Davis-Monthan AFB 85020	PHOENIX	8	3.61	7	23.05	23	28	35	23	
	86040	PAGE	3	0.93	2	33.64	56	6	26	24
85257	SCOTTSDALE	6	3.17	3	19.65	33	37	18	24	
Davis-Monthan AFB 85018	PHOENIX	9	3.65	12	25.62	17	21	58	27	
	86326	COTTONWOOD	5	2.07	5	25.06	39	24	37	28
85013	PHOENIX	4	2.28	2	18.19	45	39	22	29	
85016	PHOENIX	13	3.78	30	35.77	5	4	97	29	

3. California

California's Constitution includes an interest rate cap of ten percent per year for money loaned for personal, family, or household purposes.³⁵⁰ Moreover, the state's civil and criminal usury laws impose a maximum annual interest rate of 12% for loans of money to be used for other purposes.³⁵¹ Nevertheless, the California Deferred Deposit Transaction Law (CDDTL) charges the Department of Corporations with licensing payday lenders, who then receive safe harbor exemption from constitutional and statutory usury laws.³⁵² The CDDTL currently authorizes payday lenders to charge "15 percent of the face amount of [a] check," which equates to an annual percentage rate of about 459%.³⁵³ Lenders are not supposed to allow their borrowers to pay off some or all of a payday loan with the proceeds of another payday loan,³⁵⁴ nor may they use the borrower's original check for a subsequent payday loan.³⁵⁵ The statute also forbids lenders from entering into multiple payday loans with the same customer during any one period of time.³⁵⁶ However, the statute provides little guarantee that lenders will follow these guidelines because there is no procedure or system for verifying whether a borrower has multiple loans from multiple lenders.

California's leaders have largely stood on the sidelines as the state's payday lending industry flared in the late 1990s. According to the Associated Press, the industry did not take root in California until 1997, but thereafter "tripled in size each year" until 2002.³⁵⁷ California's regulation has been held hostage while the legislature has debated and negotiated what to do about the problem for over three years.³⁵⁸ Recently the Attorney General's office handed off oversight responsibilities of payday lenders (but not check cashers) to the Department of Corporations.³⁵⁹ This dynamic environment has created uncertainty over the total

³⁵⁰ CAL. CONST. art. XV, § 1.

³⁵¹ CAL. CIV. CODE §§ 1916-1, 1916-3 (West 1985).

³⁵² CAL. FIN. CODE §§ 23000-23106 (West Supp. 2005).

³⁵³ *Id.* § 23036(a). Until recently, California law also allowed a ten dollar "set up fee." Associated Press, *Davis Approves Audits, Study of Payday Lending Industry*, SAN DIEGO UNION-TRIB., Sept. 22, 2002, at A4. The CDDTL still authorizes a payday lender's returned check fee of \$15. CAL. FIN. CODE § 23036(e) (West Supp. 2005).

³⁵⁴ CAL. FIN. CODE § 23037(a) (West Supp. 2005).

³⁵⁵ *Id.*

³⁵⁶ *Id.* § 23036(c).

³⁵⁷ Associated Press, *supra* note 353.

³⁵⁸ Jim Evans, *California's "Payday" Policing Up in the Air*, SACRAMENTO BEE, Feb. 6, 2004, at D1, available at 2004 WLNR 12390767.

³⁵⁹ *Id.*; CAL CIV. CODE § 1789.35(e) (West Supp. 2005) (Attorney General charged with enforcing check cashing law).

number of payday lenders in the state. For our research, we have relied on data supplied to us by the state Attorney General's office, which lists a total of 2294 payday lenders in the state.³⁶⁰ Even assuming the Attorney General's conservatively small count, this is probably the largest number of payday lenders in any state. However with a population of about 34 million, this suggests that there are approximately 6.64 payday lenders per 100,000 people, placing California toward the very bottom in per capita payday lender density.

Of California's 58 counties, several counties with a significant military presence or legacy ranked highest in payday lending. San Bernardino and San Diego counties, perhaps the two counties in the state with the greatest military presence, both rank among the top five counties in terms of the number and density of payday lending. San Bernardino County, home to Fort Irwin Army Training Facility, Twentynine Palms Marine Corps Base, the eastern gates of Edward Air Force Base, China Lake Naval Weapons Facility, and several recently closed bases, is tied for the county with the highest density of payday lenders in the state. This county has 161 payday lenders, but only 217 banks, giving it the highest bank-to-payday lender ratio in the state. San Bernardino County has nearly 45 more payday lenders than one would expect, given its countywide population. San Diego County, home to Camp Pendleton and a host of naval installations, has 238 payday lenders, making it second only to Los Angeles County and giving it about 50 more than its population would suggest. Interestingly, Orange County, which neighbors San Diego County and has only a few thousand more people—but no significant military presence—has 73 fewer payday lenders. Sacramento County, though presently home to only 2100 military persons, was in recent years home to three military installations (Sacramento Army Depot and the McClellan and Mather Air Force Bases). Although the bases are closed today, many of the payday lenders that were established before the closures are still in business. The economic hardship wrought by the base closings may be partly responsible for the continued presence of the payday lenders in the area.

³⁶⁰ CAL. DEP'T OF JUSTICE, OFFICE OF THE ATT'Y GEN., CALIFORNIA DEFERRED DEPOSIT LENDER LIST (2003) (on file with authors) (provided on floppy disk by authors upon request). There are reports of much larger numbers of payday lenders in California. One *Bloomberg News* newspaper article provides an unattributed estimate of over 5600 payday lenders in California. Robinson, *supra* note 221. Some of the discrepancy may be due to growth in the industry or the *Bloomberg News* figure may include check cashers not specifically licensed as payday lenders. We also believe California probably has an unusually high number of unlicensed payday lenders given the recent regulatory handoff from the Attorney General's office to the Department of Corporations. See Evans, *supra* note 358. We have cautiously relied on the Attorney General's figures, which, in the worst case, conservatively undercount the number of payday lenders near military installations.

Table 4. California: Top 30 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Brks	PD	PD/100K	LQ	Rnk PD	Rnk PC	Rnk P.Bnk	Cmpsit Rank	Exp PD	Obs -Exp
Maclean Air Force Base, Travis AFB, Sacto Army Depot (shared)	Sacramento	1223499	197	125	10.22	63.45	5	7	2	1	81.24	43.76
Twentynine Palms USMC	S.Bernardin	1769434	217	161	9.92	74.19	3	9	1	1	113.50	47.90
Palmdale NAS	Fresno	799407	143	62	10.28	57.94	7	6	6	3	53.06	28.92
Edwards AFB	Fern	661645	95	59	8.92	62.11	10	11	3	4	43.93	15.07
NAS San Diego	S.Diego	2813533	537	238	8.46	44.92	2	12	13	5	166.83	51.17
Camp Pendleton	Madera	123109	23	14	11.37	60.87	23	1	4	6	8.17	5.83
	Tulare	368021	67	35	9.51	52.24	14	8	10	7	24.44	10.56
Camp Pendleton, Ched March AFB	Riverside	1945387	260	117	7.57	45.03	6	19	12	8	102.61	14.39
LA AFB, San Diego NAS	Los Angeles	9519348	1921	671	7.05	41.59	1	21	16	9	632.06	39.94
	Stanislaus	446997	100	41	9.17	41.00	12	10	17	10	29.68	11.32
	S.Joaquin	563598	102	44	7.81	43.14	11	16	14	11	37.42	6.56
	Merced	210554	31	17	8.07	54.84	19	15	8	12	13.98	3.02
Travis AFB	Solano	594542	62	30	7.60	48.90	17	17	11	13	25.70	3.80
	Del Norte	27507	5	3	10.91	60.00	38	2	5	13	1.83	1.17
	Tehama	58039	11	6	10.71	54.55	33	3	9	13	3.72	2.28
Seal Beach, Ched	Orange	2448269	616	165	5.90	27.23	3	25	24	16	138.09	43.99
El Toro	Yuba	80219	9	5	8.30	55.96	36	13	7	17	4.09	1.08
Baker AFB	Lake	58309	15	6	10.29	40.00	33	5	18	17	3.67	2.13
	Butte	203171	48	15	7.38	31.25	21	20	21	19	13.49	1.51
LaMoore NAS	Kings	129461	19	8	8.18	42.11	28	23	15	20	8.60	0.80
	Mendocino	86265	23	7	8.11	30.43	31	14	22	21	5.73	1.27
	S.Clara	1682585	332	76	4.52	22.89	8	33	27	22	111.72	-35.72
	Sutter	78930	15	6	7.60	40.00	33	18	18	23	5.24	0.76
	Colusa	18804	7	2	10.64	28.57	44	4	23	24	1.25	0.75
	Alameda	1443741	292	65	4.50	22.26	9	35	30	25	95.86	-30.86
	Humboldt	126518	30	8	6.32	26.67	28	22	25	26	8.40	-0.40
Port Huerns	Ventura	753197	150	34	4.51	22.87	15	34	29	27	50.01	16.01
	Shasta	163266	44	10	6.13	22.73	26	24	28	27	10.84	-0.84
	S.Francisco	776733	261	38	4.89	14.56	13	29	38	29	51.57	-13.57
Vandenberg AFB	S.Barbara	395347	98	19	4.76	19.95	16	31	32	30	26.51	7.52

Smaller military counties in California also have greater than expected densities of payday lenders. Yuba County, home to Beale Air Force Base and with only a little over 60,000 people, has at least five payday lenders—about two more than one would expect given statewide averages. Five additional payday lenders are located just across the county line in Yuba City, a town of only about 30,000 people and situated less than ten miles from the somewhat isolated U2 spy plane base. The other counties ranking in the top ten in number and density of payday lenders include Los Angeles County and several in the impoverished San Joaquin Valley, where poverty rates are typically over 15%.

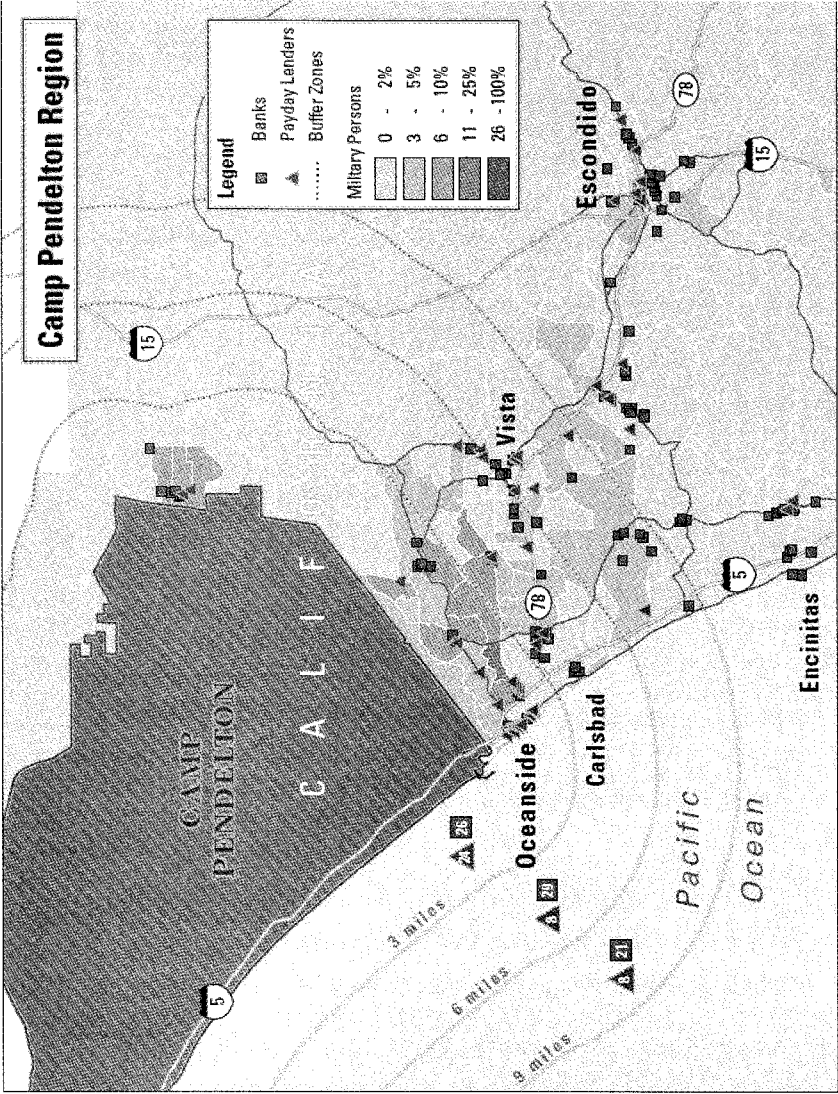
Based on statewide averages, we found higher than expected densities of payday lenders around military bases when mapped at ZIP code level as well. Fourteen of the top 20 payday lending ZIP codes in California are within five miles of an active or recently closed military installation. Perhaps the most telling picture emerged just south of Camp Pendleton Marine Corps Base in Oceanside. The ZIP code at Camp Pendleton's southern gate is a relatively affluent, beachfront community—hardly the place one would expect a large number of payday lenders. Yet this ZIP code region (92054) has 22 payday lenders, five more than any of the other 1661 ZIP code regions in California. Given Oceanside's population, there should be roughly five payday lenders, but it has seventeen more than what would be expected. Even if one were to consider the entire population of 30,000 Marines at Camp Pendleton as part of Oceanside's demographics, there would still be at least thirteen extra payday lenders, four more than we found in all of Marin County (population 250,000). Oceanside (92054) has six more payday lenders than banks. For the sake of comparison, the neighboring ZIP codes in Carlsbad, California (92008 and 92009) have 3000 more people than Oceanside (92054) but only two payday lenders. Admittedly, Carlsbad is slightly more affluent than Oceanside, but this cannot explain the stark difference in the number and density of payday lenders in these two neighboring towns. Clearly, the difference is Oceanside's proximity to the nearly 30,000 Marines stationed at Camp Pendleton.

Table 5. California: Top 30 ZIP Codes Ranked by Payday Lending

Neighborhood	ZIP	Town or City	Payday Lenders	Exp. PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
Cisd Sac Army Depot	95820	SACRAMENTO	9	2.46	0.0	24.04	32	36	2	1
Cisd McClellan AFB	95860	NOR.HIGHLANDS	10	2.02	2.0	32.10	21	21	41	2
NAS - LeMoore 20 mi	93727	FRESNO	13	3.66	4.0	23.18	4	40	49	3
Cisd Norton AFB	92410	SAN BERNARDINO	9	2.87	0.0	20.26	32	60	2	4
91767	POMONA		11	3.14	3.0	22.77	11	41	47	5
Cisd McClellan AFB	95841	SACRAMENTO	9	1.38	3.0	42.74	32	11	57	6
MCAS Miramar	92022	TENTH AVENUE	7	1.19	2.0	38.93	56	14	55	7
Palms										
90028	LOS ANGELES		11	1.98	7.0	36.82	11	16	107	8
NS San Diego- 4 mi	91945	LEMON GROVE	7	1.70	2.0	27.09	56	29	35	9
90014	LOS ANGELES		12	0.25	9.0	317.21	6	3	137	10
MCAS and NH Camp	92054	OCEANSIDE	27	4.98	16.0	25.04	7	30	117	11
Pandeleit										
93726	FRESNO		10	2.56	6.0	25.67	21	32	105	12
Cisd Norton AFB- 5 mi	92376	RIALTO	14	5.06	7.0	17.93	3	78	79	13
Cisd March AFB	92553	MORENO VALLEY	13	4.05	9.0	20.78	4	56	118	14
NS San Diego	92105	SAN DIEGO	12	4.70	6.0	16.97	6	93	83	15
90249	GARDENA		6	1.75	2.0	22.64	83	43	59	16
NWS Seal Beach	90630	CYPRESS	8	3.12	3.0	16.66	46	90	62	17
Cisd Long Beach NS- 3 mi	90745	CARSON	10	3.89	6.0	17.70	21	80	105	18
MCAS-Miramar- 5 mi	92021	EL CAJON	12	3.98	9.0	19.68	6	64	137	19
NWS Seal Beach	90715	HAWAIIAN GROVES	4	0.99	0.0	26.98	171	30	8	20
92704	SANTA ANA		15	6.07	10.0	16.07	2	99	109	21
NS San Diego	91950	NATIONAL CITY	9	3.92	5.0	16.74	32	51	88	22
93306	BAKERSFIELD		10	3.55	7.0	18.47	21	72	121	23
91763	MONTCLAIR		7	2.23	4.0	20.39	56	59	102	24
NWS Seal Beach	92804	ANAHEIM	11	5.71	3.0	12.59	11	161	47	25
Cisd McClellan AFB	95842	SACRAMENTO	5	2.12	0.0	15.53	110	110	5	26
90022	LOS ANGELES		11	4.61	7.0	15.67	11	107	107	26
90011	LOS ANGELES		11	6.75	0.0	10.65	11	214	1	28
91601	NOR. HOLLYWOOD		7	2.53	4.0	18.10	56	75	102	29
Los Angeles AFB	90020	LAUNDALE	5	2.23	0.0	14.64	110	143	5	30

San Diego County was the location chosen in California for a street-level analysis, which is partially reproduced in Map 1. Since San Diego County is large and includes multiple military installations, our primary focus was on the Camp Pendleton region, but other military neighborhoods were also examined and analyzed. In the three-mile buffer zone around Camp Pendleton (and its adjacent DOD property, such as the Fallbrook Naval Weapons Annex), we found 24 payday lenders. This is ten percent of all the payday lenders we were able to map in all of San Diego County. By comparison, there were 25 banks in this three-mile buffer, representing only 4.65% of the total bank branches mapped in San Diego County. Approximately 148,859 people live inside this three-mile buffer zone, accounting for just over five percent of the county's population. Combined, the buffer zone extending three to nine miles around the base has only sixteen payday lenders, although there are 204,396 persons living in these buffer zones.

The rest of San Diego County is speckled with military installations. Rather than placing buffer zones around individual DOD properties on this map, which was the practice in other cases, we instead placed buffer zones around census tracts with high percentages of military persons. This method was employed for this area because DOD installations are so numerous and so scattered in San Diego County that the map would have virtually no space not covered by a buffer zone. Also, many of the service persons and their families do not live on-base, as was the case with many of the military towns we examined. Instead, we focused on census tracts with over ten percent of the population aged 18 to 64 actively serving in the Armed Forces, designating them military census tracts. Buffers were created around each of these tracts. The primary value of this map is to show the dispersed nature of the military population in San Diego. The heightened density of payday lending in these neighborhoods is less suggestive than it is in Oceanside, but it is visible nevertheless. None of the military neighborhoods in San Diego are lacking multiple payday lenders, though several are not well-served by banks. Countywide, more than two-thirds of the payday lenders are within three miles of a military neighborhood, while less than half of the banks are within the same three-mile buffer.



4. Colorado

Section 5-12-103 of Colorado's state code makes it a felony to lend at interest rates in excess of 45% percent per annum.³⁶¹ Historically, supervised small loan lenders in Colorado were limited to a 36% interest rate for loans of less than \$1000.³⁶² However, like many other states, payday lenders have successfully pressured the Colorado legislature into granting them a special exemption from the criminal usury law.³⁶³ The Colorado Deferred Deposit Loan Act (DDLA) gives licensed payday lenders the right to charge 20% of the first \$300 loaned, plus 7.5% of any amount loaned in excess of \$300.³⁶⁴ For a typical two-week \$300 payday loan, this amounts to an annual percentage rate of about 520%. Once the loan is made, Colorado law authorizes accrual of interest for only the first 40 days after the loan transaction date; even if the lender chooses to delay completion of the transaction beyond this time, the lender is not supposed to charge any additional fees.³⁶⁵ To prevent lenders from indefinitely extending the 40-day loan period through periodic "renewals," the Colorado legislature has instructed payday lenders not to renew loans more than once.³⁶⁶ Still, payday lenders are free to refinance a payday loan under the Uniform Consumer Credit Code (UCCC) with a maximum annual interest rate of 36%.³⁶⁷ However, Colorado has no program to actually guarantee that consumers do not extend their payday loans indefinitely by switching between different lenders, nor by extending loans with one lender.

³⁶¹ COLO. REV. STAT. § 5-12-103 (2004). Section 18-15-104(1) states:

Any person who knowingly charges, takes, or receives any money or other property as a loan finance charge where the charge exceeds an annual percentage rate of forty-five percent or the equivalent for a longer or shorter period commits the crime of criminal usury, which is a class 6 felony.

COLO. REV. STAT. § 18-5-104(1) (2004).

³⁶² *Id.* § 5-2-201.

³⁶³ *Id.* § 18-15-104(4)(a).

³⁶⁴ *Id.* § 5-3.1-105. A consumer borrowing \$100 must write a check for \$120 so that the lender may take its \$20 fee from the check. Assuming that the consumer borrows this money for fourteen days subject to a 20% fee, the effective annual interest rate is 520%.

³⁶⁵ *Id.* § 5-3.1-103.

³⁶⁶ *Id.* § 5-3.1-108(1). The DDLA, as introduced by Colorado Senate Bill 00-144, would have allowed up to three renewals on a single deferred deposit loan, but the Senate Business Affairs and Labor Committee reduced that number to just one. Letter from Laura E. Udis, Administrator of the Uniform Consumer Credit Code 2 (June 27, 2000), <http://www.ago.state.co.us/UCCC/opinions/deferdeplan062700.pdf>.

³⁶⁷ COLO. REV. STAT. § 5-3.1-108(4) (2004); Letter from Laura E. Udis, *supra* note 366,

Nevertheless, unlike many states, Colorado officials have made some significant efforts to enforce the loan duration limitations in their payday lending statute. For example, in July 2001, Colorado Attorney General Ken Salazar filed a civil lawsuit in state court against ACE Cash Express, Inc., the largest check-cashing business in the country,³⁶⁸ for violating the DDLA.³⁶⁹ Salazar accused ACE of regularly allowing borrowers to renew payday loans far more times than allowed under the state rollover limit.³⁷⁰ Moreover, ACE had not even bothered to obtain a license to operate legally under Colorado state law.³⁷¹ ACE removed the case to federal court, claiming that it was an agent of California-based Goleta National Bank.³⁷² Employing a “charter-renting” argument, ACE argued that the federal National Bank Act preempted any state law claims arising under the DDLA.³⁷³ The Federal District Court of Colorado disagreed, however, finding that resolution of Salazar’s complaint was not controlled by the National Bank Act.³⁷⁴ Even though ACE Cash Express may have been an agent of Goleta, the court distinguished *Marquette* because ACE was not a *subsidiary* of Goleta.³⁷⁵ The court further stated that ACE and Goleta were “*separate entities*” and, thus, ACE could not escape the authority of Colorado state law.³⁷⁶ After the case was remanded to state court, ACE settled with the Colorado Attorney General, agreeing to pay \$1.3 million in restitution to Colorado consumers and to comply with Colorado’s payday lending laws in the future.³⁷⁷

In October 2002, Salazar again initiated disciplinary proceedings, this time against Americash, a Knoxville, Tennessee-based payday lender operating ten payday loan stores in Denver and Colorado Springs.³⁷⁸ As before, Salazar

at 2. Specifically, a payday lender may charge either (1) 36% interest for the first \$1000, 21% interest on any balance in the amount of \$1000 to \$3000, and 15% interest on any part of the loan in excess of \$3000 or (2) 21% interest on the entire loan. *Id.* § 5-2-201(2).

³⁶⁸ Press Release, California Reinvestment Comm., Community Groups Warn Goleta National Bank Shareholders of Dangers of Ace Cash Express Partnership (May 23, 2002), http://www.calreinvest.org/PRESS/press_5_23_02.html.

³⁶⁹ Press Release, Office of the Attorney Gen. of Colo., ACE Cash Express to Pay \$1.3 Million in Restitution to Consumers (May 6, 2002), http://www.ago.state.co.us/press_detail.cfm?pressID=371.

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² *People v. ACE Cash Express, Inc.*, 188 F. Supp. 2d 1282, 1284 (D. Colo. 2002).

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ *Id.* at 1285.

³⁷⁷ Office of the Attorney General of Colo., *supra* note 369.

³⁷⁸ *Americash Shut Down*, DENV. BUS. J., Nov. 18, 2003, *available at* <http://www.bizjournals.com/denver/stories/2003/11/17/daily16.html>.

claimed that Americash was operating in violation of Colorado's payday lending law by renewing loans more than one time and by falsifying its records to make it appear as if the borrower had paid off the original loan in full before obtaining a new loan.³⁷⁹ One year later, Americash settled with the Attorney General, agreeing not to engage in payday lending in the future in Colorado. It further consented to surrender its license and pay \$18,000 in damages.³⁸⁰ Colorado officials said they would use the money in part to reimburse the costs incurred in prosecuting the case and for consumer education.³⁸¹

Colorado ranks toward the bottom of our list of states in terms of the number and the density of payday lending. Colorado has 4.3 million people, 361 payday lenders, and 1390 banks.³⁸² The relative lack of payday lending statewide may be partially attributable to the general prosperity and relatively well-funded educational system in Colorado. Still, where payday lenders are found in high concentrations, they tend to be near military installations. There are 63 counties in Colorado and only six of them either house or border a military installation. These same six counties are the six top counties in the state for payday lending. The two counties most densely populated with payday lenders in our composite ranking, Pueblo and El Paso, both share the Army Base at Fort Carson. These two military counties alone account for 26% of the payday lenders in the entire state.

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² Uniform Consumer Credit Code Div., Colo. Depart. of Law, Colo. Deferred Deposit Lender List, Dec. 2003 (on file with authors) (provided in digital format by authors upon request).

Table 6. Colorado: Top 22 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lnds	PD/100 KPop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
Fort Carson	Pueblo	141472	37	28	19.79	75.68	6	1	1	1	11.87	16.13
Fort Carson, Peterson	El Paso	516929	129	66	12.77	51.16	1	5	3	2	43.39	22.61
Schriever Buckley AFB	Adams	363857	62	45	12.37	72.58	4	6	2	3	30.54	14.46
Fort Carson	Fremont	46145	13	6	13.00	46.15	11	4	4	4	3.87	2.13
Buckley AFB	Denver	354636	158	52	9.38	32.91	2	12	7	5	46.65	5.45
Buckley AFB	Arapahoe	487967	146	46	9.43	31.51	3	11	8	6	40.95	5.05
Alamosa	Alamosa	14966	7	2	13.36	28.57	12	3	9	7	1.26	0.74
Teller	Teller	20555	5	2	9.73	40.00	12	9	5	8	1.73	0.27
Mesa	Mesa	116255	41	11	9.46	26.83	10	10	10	9	9.76	1.24
Lincoln	Lincoln	6087	4	1	16.43	25.00	18	2	11	10	0.51	0.49
Logan	Logan	20504	8	2	9.75	25.00	12	8	11	10	1.72	0.28
Weld	Weld	180936	57	14	7.74	24.56	8	14	13	12	15.19	-1.19
Jefferson	Jefferson	527056	173	39	7.40	22.54	5	16	15	13	44.24	-5.24
Moffat	Moffat	13184	3	1	7.58	33.33	18	15	6	14	1.11	-0.11
Larimer	Larimer	251494	75	17	6.76	22.67	7	18	14	14	21.11	-4.11
Montezuma	Montezuma	23830	10	2	8.39	20.00	12	13	16	16	2.00	0.00
Archuleta	Archuleta	9898	8	1	10.10	12.50	18	7	19	17	0.83	0.17
Montrose	Montrose	33432	12	2	5.98	16.67	12	21	17	18	2.81	-0.81
Boulder	Boulder	291288	112	14	4.81	12.50	8	24	19	19	24.45	-
Las Animas	Las Animas	15207	6	1	6.58	16.67	18	19	17	20	1.28	-0.28
Prowers	Prowers	14483	8	1	6.90	12.50	18	17	19	20	1.22	-0.22
Chaffee	Chaffee	16242	8	1	6.16	12.50	18	20	19	22	1.36	-0.36

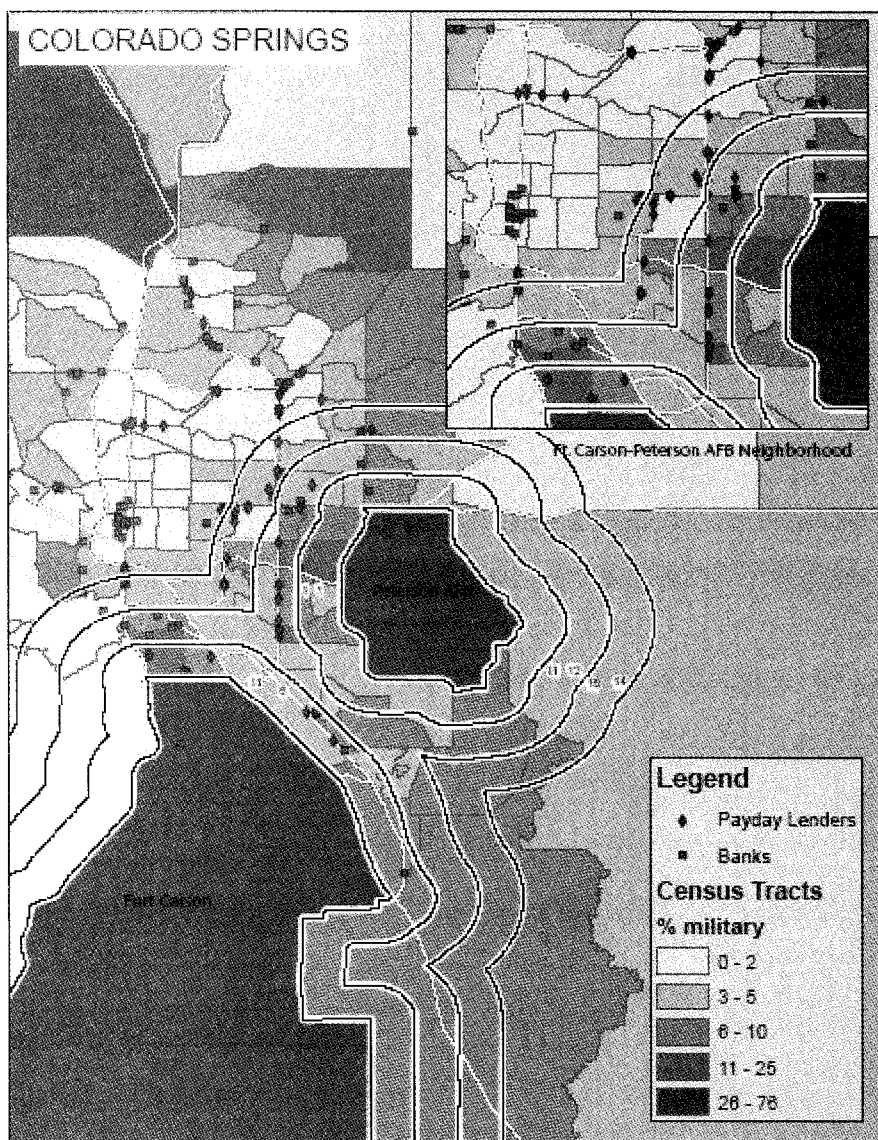
At the ZIP code level, the military districts in Colorado also stand out in our ranking of payday lending regions. One of the worst ZIP codes in the state is 80012 in Aurora, Colorado. Situated essentially in the middle of two recently closed bases (Lowry Air Force Base and Fitzsimons Army Medical Center) and the still-active Buckley Air Force Base/Air National Guard Base, this ZIP code has fifteen banks and eleven payday lenders, the third most of any ZIP code in the state and 7.4 more payday lenders than statistically expected.

A ZIP code analysis clearly demonstrates that the Fort Carson area is the favorite spot in the state for payday lenders. Bordering Fort Carson on the south is Pueblo, Colorado. Pueblo has only seven ZIP codes, but still manages to include the first, sixth, and ninth worst ZIP codes in the state. Pueblo has 36 banks and 28 payday lenders—nearly double our statistical expectations. Eight of those payday lenders are in Pueblo ZIP code 81008, which directly borders Fort Carson. Because this ZIP code has less than 7000 people in it, statewide averages suggest there should not be a single payday lender operating there. Instead, the ZIP code bordering Fort Carson has the highest density of payday lenders per capita in the state.

Table 7. Colorado: Top 30 ZIP Codes Ranked by Payday Lending

Neighb. Base	ZIP	Town or City	Payday Lenders	Exp. PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
Ft. Carson-6 to 15 mi	81005	PUEBLO	11	2.29	5.0	40.36	3	5	7	1
Buckley AFB	80011	AURORA	12	3.95	4.0	25.15	2	14	5	2
Peterson AFB Cheyenne	80916	CO. SPRINGS	9	2.86	2.0	28.39	8	10	3	2
Mtn. AFS										
Peterson AFB Cheyenne	80909	CO. SPRINGS	13	3.21	9.0	33.96	1	7	15	4
Mtn. AFS										
Clsd Lowrey AFB-7 mi	80214	DENVER	7	1.34	2.0	43.81	13	4	6	4
Ft. Carson	81008	PUEBLO	8	0.57	5.0	117.30	9	1	22	6
Clsd Lowrey AFB-7 mi	80221	DENVER	8	3.21	4.0	20.88	9	20	8	7
Ft. Carson	80906	CO. SPRINGS	11	4.13	12.0	22.37	3	16	21	8
Ft. Carson-8 to 15 mi	81003	PUEBLO	7	1.22	10.0	48.23	13	3	33	9
Buckley AFB	80012	AURORA	11	3.60	15.0	25.67	3	15	32	10
Peterson AFB Cheyenne	80917	CO. SPRINGS	5	2.55	0.0	16.40	22	32	1	11
Mtn. AFS										
Buckley AFB	80017	AURORA	5	2.46	1.0	17.04	22	39	4	12
Buckley AFB	80010	AURORA	7	3.64	4.0	16.14	13	33	11	13
Buckley AFB-5 mi	80224	DENVER	5	1.51	6.0	27.83	22	12	23	13
Clsd Lowrey AFB-7 mi	80226	DENVER	8	2.47	12.0	27.18	9	13	37	15
Ft. Carson-Peterson	80910	CO. SPRINGS	5	2.33	3.0	19.00	22	26	12	16
	80631	GREELEY	11	3.64	18.0	25.39	3	16	43	17
Clsd Lowrey AFB-3 mi	80205	DENVER	5	2.48	3.0	16.89	22	31	12	18
Buckley AFB	80220	DENVER	5	2.82	3.0	14.89	22	36	12	19
	80030	WESTMINSTER	6	1.37	12.0	36.79	18	6	46	19
	80110	ENGLEWOOD	8	3.69	14.0	18.18	9	24	44	21
	80601	BRIGHTON	5	1.85	9.0	22.68	22	17	42	22
Buckley AFB	80014	AURORA	6	2.87	9.0	17.57	18	29	36	23
Clsd Lowrey AFB-3 mi	80222	DENVER	6	1.63	14.0	30.85	18	9	56	24
	80538	LOVELAND	5	2.92	6.0	14.37	22	40	23	25
USAF Academy	80918	CO. SPRINGS	7	1.15	10.0	14.17	13	42	33	26
	81501	GRAND JUNCTION	7	1.74	19.0	33.81	13	8	67	26
Ft. Carson-Peterson	80911	CO. SPRINGS	4	2.47	3.0	13.59	32	45	17	28
Buckley AFB	80322	COMMERCE CITY	4	2.37	5.0	14.19	32	41	25	29
	80210	DENVER	4	2.58	4.0	13.00	32	47	19	29

The northern part of Fort Carson is bordered by Colorado Springs, one of the United States' best known "military towns," and is therefore an ideal case study site for additional analysis. Colorado Springs is a fairly large city and has 24 ZIP codes. Five of them rank among the worst in the state and contain most of the 65 payday lenders citywide. As illustrated in Map 2, almost all of the nearly 27 extra payday lenders in Colorado Springs are in three ZIP codes located very close to Fort Carson and Peterson Air Force Base. For example, ZIP code 80909 has thirteen payday lenders, the most of any ZIP code in the state and almost ten more than we predicted based on the local population. The second worst ZIP code in the state (80916) has only two banks but nine payday lenders for its 32,000 people. Most of the payday lenders in this part of town are on Academy Boulevard. This street, which runs south from the Air Force Academy toward the other two bases in town has at least nineteen payday lenders, with two more just off Academy Boulevard. Seventeen of the payday lenders on Academy are along a roughly five-mile stretch in the neighborhoods closest to Peterson Air Force Base and Fort Carson. By contrast, only six banks can be found along the same five-mile stretch of Academy Boulevard. This stretch of highway is very likely home to one of the heaviest concentrations of payday lenders anywhere in the country. Thirty-eight of the 63 payday lenders (60.3%) whose addresses could be matched in El Paso County were within three miles of Peterson Air Force Base or Fort Carson, which are only a few miles apart. That is more than ten percent of the total number of payday lenders statewide, serving only three percent of the state's population, and about 26 more payday lenders than statistically expected given the number of people inside that perimeter.



5. Delaware

Delaware has long had a reputation for its laissez faire corporate, tax, and banking laws. In the wake of the *Marquette* decision, Delaware actively encouraged banks to export the state's regulatory environment to states more focused on consumer protection issues. Today, the state is well-known as the epicenter of the nation's credit card lending operations. Delaware also imposes no interest rate cap for payday loans allowing lenders to charge interest "as the agreement governing the loan provides."³⁸³ Delaware law purports to limit the duration of payday loans to 60 days and the number of payday loan rollovers to no more than four times.³⁸⁴ However, the effect of these provisions is ambiguous in that payday lenders may refinance the entire outstanding and unpaid amount of a payday loan, and they may even charge a refinancing fee for doing so.³⁸⁵

Lenders operating in states with strict payday lending laws now consistently seek to partner with Delaware banks in order to export Delaware's deregulated interest rates to their home states.³⁸⁶ For example, First Bank of Delaware, which rents its charter to payday lenders around the country, had \$5 million in outstanding payday loans by the end of 2002, equating to 20% of its total assets.³⁸⁷ Similarly, the State of New York has accused County Bank of Rehoboth Beach, a Delaware-chartered state bank, of criminally facilitating evasion of New York's usury laws.³⁸⁸ In a different vein, PDL Marketing, LLC is a Delaware-based company that generates 7000 payday loan applications each day for payday lenders located throughout the United States.³⁸⁹

For our purposes, Delaware is also of interest because it is home to Dover Air Force Base, which is the best example of an urban, East Coast base in a small state. Despite its liberal banking environment, payday lending is no more common here than it is in some rural southern states. Delaware has 256 banks

³⁸³ DEL. CODE ANN. tit. 5, § 2229 (2001).

³⁸⁴ *Id.* §§ 2227(7), 2235A(a)(1) (Supp. 2004).

³⁸⁵ *Id.* § 2235A(c).

³⁸⁶ Consumer Federation of America, Consumer and Cmty. Groups Call on Fed. Reserve Bd. to Halt Rent-A-Bank Payday Lending by Del. Bank (Apr. 15, 2003), <http://www.consumerfed.org/FedLetter.html>.

³⁸⁷ *Id.*

³⁸⁸ *People v. County Bank of Rehoboth Beach*, No. 1:03-CV-1320 (N.D.N.Y. May 25, 2004), www.abanet.org/buslaw/committees/CL230044pub/links.shtml (subscription required).

³⁸⁹ Press Release, PRWeb, Del. Based PDLMarketing.com Driving Force Behind America's Newest Bus. Success Stories (Jan. 10, 2005), <http://www.prweb.com/releases/2005/1/prweb194851.php>.

and 120 payday lenders³⁹⁰ for its 784,000 people. These numbers rank it in the upper half in terms of payday lending density among the states we surveyed.

There are only three counties in Delaware, but Kent County, which includes Dover A.F.B., ranks first in the state in payday lending activity. In Kent County there are approximately 127,000 people, 32 banks and 30 payday lenders. This is about ten more payday lenders than predicted for that population according to our statistics.

³⁹⁰ Del. Office of the State Bank Comm'r, Non-Depository Institutions (Dec. 1, 2003), <http://www.state.de.us/bank/information/nondepsearch.shtml> (search parameters included "all licensed lenders").

Table 8. Delaware: Top 3 Counties Ranked by Payday Lending

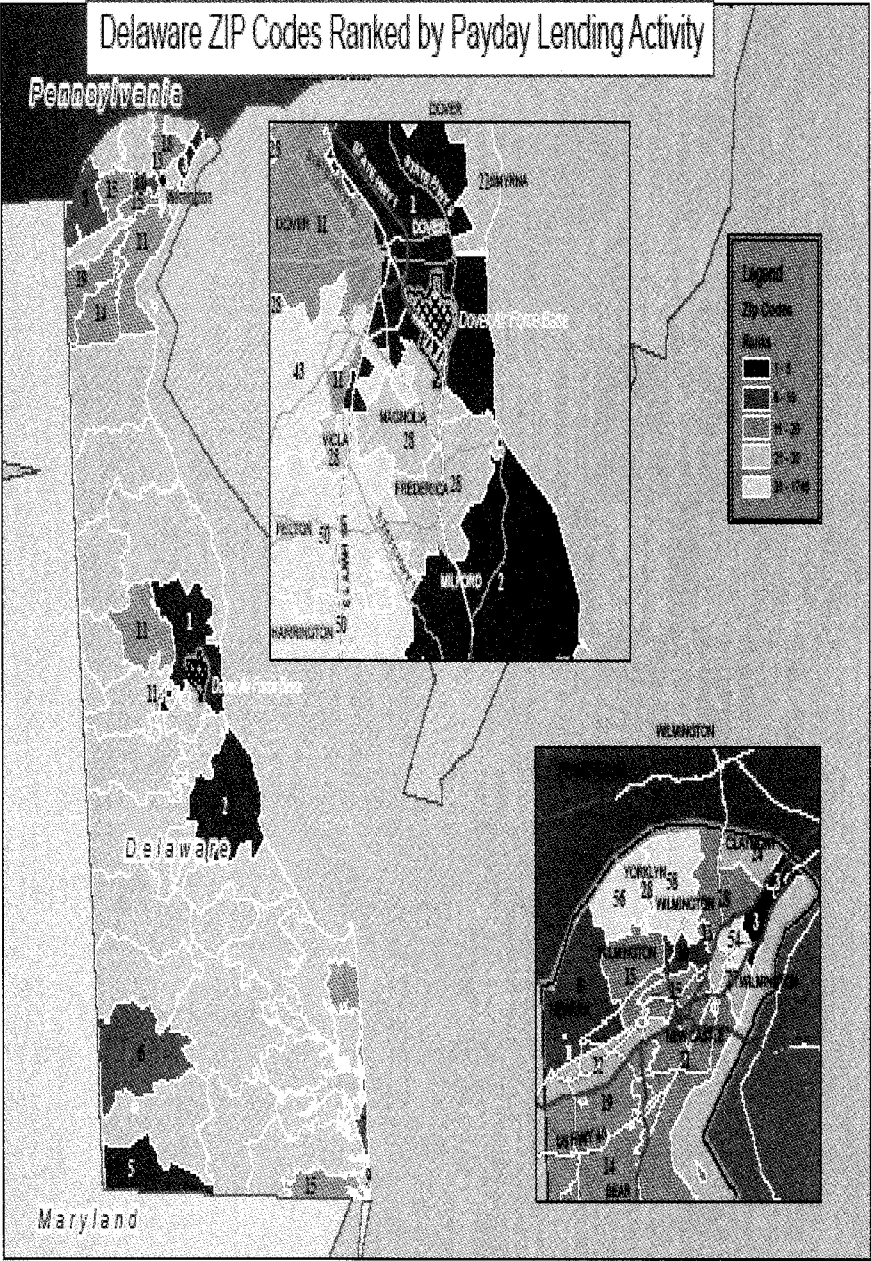
Nearest Base(s)	County	Pop	Bnks	PD Lntrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
Dover AFB	Kent	126097	32	30	23.68	93.75	2	1	1	1	19.40	10.60
	New Castle	500265	170	72	14.39	42.35	1	2	2	2	76.61	-4.61
	Sussex	156638	54	18	11.49	33.33	3	3	3	3	23.99	-5.99

Because of Delaware's lack of consumer protection laws, we expected to find the majority of the high-ranking ZIP codes bordering other nearby states that would serve borrowers from Maryland and New Jersey. This payday lender location strategy was evident to some extent. However, as Map 3 illustrates, the ZIP codes that ranked first and second for payday lending density statewide were both next to the Air Force Base in Dover. Dover ZIP 19901 had less than 32,000 people and six banks, but had fifteen payday lenders, which amounts to ten more than statewide averages would lead us to expect based on this population. Just a few miles from the base is Milford (ZIP 19963). Though only populated by less than 15,000 people, Milford has seven banks and eight payday lenders, which is about six lenders above statistical expectations.

Table 9. Delaware: Top 27 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday	Exp	Banks	PD/100K	RPD	RPC	LQ Rank	Composite Rank
Dover AFB Dover AFB 4 miles	19803	DOVER	16	0.83	8.0	47.55	1	5	1	1
	19803	MILFORD	8	2.17	7.0	56.60	4	4	4	2
	19809	WILMINGTON	6	2.23	2.0	41.19	6	7	2	3
	19703	CLAYMONT	7	2.35	3.0	45.68	5	6	4	3
	19940	DELMAR	3	0.79	1.0	58.30	15	3	3	5
	19973	SEAFORD	6	3.38	7.0	27.21	6	8	9	6
	19930	BETHANY BEACH	2	0.39	2.0	77.82	18	2	6	7
	19711	NEWARK	10	8.60	14.0	17.82	2	14	13	8
	19944	FENWICK ISLAND	1	0.09	1.0	163.93	24	1	6	9
	19805	WILMINGTON	6	6.14	8.0	14.96	6	20	10	10
	19976	DOVER	8	4.28	4.0	17.89	10	13	15	11
	19720	NEW CASTLE	9	8.86	17.0	15.57	3	17	18	11
	19806	WILMINGTON	2	1.47	3.0	20.86	18	11	11	13
	19701	BEAR	5	5.08	8.0	15.09	10	19	15	14
	19975	SELBYVILLE	1	0.89	1.0	17.28	24	15	6	15
	19804	WILMINGTON	3	2.74	5.0	16.75	15	16	14	15
	19808	WILMINGTON	6	6.04	18.0	15.22	6	18	21	15
	19803	WILMINGTON	4	3.26	14.0	18.81	12	12	22	18
	19702	NEWARK	4	6.67	6.0	9.19	12	24	12	19
	19971	REHOBOTH BEACH	2	1.42	11.0	21.51	18	10	25	20
	19977	SMYRNA	2	2.16	4.0	14.22	16	21	17	21
	19713	NEWARK	3	4.79	7.0	9.59	15	23	19	22
	19966	MILLSBORO	2	2.86	6.0	10.70	18	22	20	23
	19810	WILMINGTON	2	3.87	11.0	7.92	18	25	25	24
	19947	GEORGETOWN	1	2.28	6.0	6.73	24	26	23	25
	19709	MIDDLETOWN	1	3.09	6.0	4.95	24	27	23	26
	19801	WILMINGTON	4	2.27	29.0	27.01	12	9	58	27

Dover Air Force Base was selected for additional street-level analysis. In the first two miles from the base, we could find only one bank, but six payday lenders. We saw a slight return to normalcy between two and three miles from the base, as banks outnumbered payday lenders at a ratio of nine banks to five payday lenders.



6. Florida

Like other states discussed so far, Florida has legislation specifically authorizing payday lenders to exceed the state's interest rate cap.³⁹¹ Under Florida law, payday lenders may charge ten percent of the loan. Payday lenders are also authorized to charge the borrower a "verification fee" of no more than five dollars.³⁹² Combined, the two charges allow Florida lenders to charge an effective annual percentage rate of 390%.³⁹³

On the other hand, Florida has been innovative in trying new ways to avoid the problem of chronic rollovers by borrowers who are unable to repay their initial payday loans when due. First, the Deferred Presentment Act strictly prohibits any rollover of a payday loan;³⁹⁴ indeed, a borrower must wait 24 hours after redeeming or otherwise terminating a payday loan before entering into another payday loan transaction.³⁹⁵ Second, the Act forbids a lender from redeeming, extending, or otherwise consolidating a payday loan with the proceeds of an additional payday loan made by the same or an affiliated lender.³⁹⁶ Finally, it prohibits a lender from extending a payday loan to any person who has an outstanding payday loan with that lender *or with any other payday lender*.³⁹⁷ To facilitate compliance with these requirements, Florida has implemented a common database, accessible via the internet, connecting all deferred presentment providers.³⁹⁸ Lenders must submit the personal information of any borrower entering into a payday loan into the database, including the borrower's name, address, social security number, driver's license number, amount of the transaction, and the dates that the transaction commences and terminates.³⁹⁹ Florida has experienced an 82% decrease in multiple outstanding

³⁹¹ The Deferred Presentment Act effectively exempts payday loans from the state's normal usury laws capping interest at an annual rate of 18%. *See* FLA. STAT. ANN. §§ 687.02(1), 687.03(1) (West 2003).

³⁹² *Id.* § 560.404(6) (West 2002 & Supp. 2005).

³⁹³ For every \$100 loaned, a payday lender may charge interest of ten dollars and a verification fee of five dollars, amounting to a total fee of 15%; assuming an average loan duration of fourteen days, the annual percentage rate of interest is 390%.

³⁹⁴ FLA. STAT. ANN. § 560.404(18) (West 2002 & Supp. 2005).

³⁹⁵ *Id.* § 560.404(19).

³⁹⁶ *Id.* § 560.404(18).

³⁹⁷ *Id.* § 560.404(19).

³⁹⁸ *Id.* § 560.404(23).

³⁹⁹ *Id.* The information entered in to the database is confidential except when payday lenders need to access it to verify whether a potential borrower has any outstanding (or recently terminated) deferred presentment transactions. FLA. STAT. ANN. § 560.404(23) (West 2002 & Supp. 2005).

payday loans since implementing the internet database.⁴⁰⁰

Moreover, if a borrower cannot repay a payday loan at the end of the loan's original term, Florida's Deferred Presentment Act also imposes strict regulations on both the lender and the borrower. First, the Act prohibits the lender from depositing the check so long as the borrower informs the lender that the check will bounce.⁴⁰¹ Second, the lender—without any additional charge—must give the borrower a 60-day grace period to repay the loan.⁴⁰² Finally, the Act requires that, as a condition of receiving the 60-day penalty-free grace period, the borrower must enter a consumer credit counseling program with a counseling agency approved by the State.⁴⁰³

Many payday lenders have actively sought to circumvent or ignore these rules. For example, state authorities discovered that ACE Cash Express simply chose to ignore the 390% interest rate cap.⁴⁰⁴ As explained below, our research also suggests that a significant number of Florida payday lenders may have failed to obtain licenses to operate payday loan businesses. If some lenders are not obtaining licenses, one can only speculate to what extent these and other lenders are registering their loans on the state database, or for that matter, complying with rollover limitations. Nevertheless, Florida has taken some limited enforcement measures, such as the settlement imposed on ACE Cash Express. In exchange for Florida's withdrawing its lawsuit, ACE agreed to comply with the Deferred Presentment Act in the future and to pay \$500,000 in damages: \$250,000 to the state government and \$250,000 to the University of Florida law school.⁴⁰⁵

In this regulatory environment, Florida has developed a payday lending industry that is relatively small, given its sizeable population of about sixteen million people, particularly in comparison to the high payday lender numbers found other southeastern states. In fact, Florida has about the same number of payday lenders as Alabama or Missouri, even though it has about ten million more people than either. Because Florida has a number of very large metropolitan regions and mostly Air Force bases, we suspected that military towns would not figure heavily in the pattern of payday lenders statewide. That suspicion is only partly supported by the data.

⁴⁰⁰ Don Kennedy, *It's Hard to Break Free from Payday Lending Trap*, FLAGSHIP, June 19, 2003, http://www.flagshipnews.com/archives_2003/jun192003_2.shtml.

⁴⁰¹ FLA. STAT. ANN. § 560.404(21) (West 2002 & Supp. 2005).

⁴⁰² *Id.* § 560.404(22)(a).

⁴⁰³ *Id.*

⁴⁰⁴ Associated Press, *Payday Lender Settles Florida Dispute*, ST. PETERSBURG TIMES (Fla.), Jan. 3, 2003, http://www.sptimes.com/2003/01/03/news_pf/Business/Payday_lender_settles.shtml.

⁴⁰⁵ *Id.*

We conservatively estimate that there are 1071 payday lenders in the state. This may be an undercount. The Florida Department of Financial Services' Office of Financial Regulation lists 1040 firms that have submitted notices to conduct business as a Deferred Presentment Provider.⁴⁰⁶ However, we found an additional 46 businesses with the word "payday" in their business name who apparently have not submitted such a notice; nonetheless, we chose to add those to our list. There were several hundred more businesses with names that suggested that they too were involved in payday lending, but we chose not to include them in order to err on the side of caution. A search of the Reference USA business database produced a list of 1172 businesses in the category of "check cashing."⁴⁰⁷ A quick survey of this list revealed that it includes well over 75% of the same businesses as the list of Deferred Present Providers published by the State of Florida. Therefore, though we consider the official state list somewhat short of a full account of payday lending in Florida, we are nevertheless confident that it represents a highly reliable statistical sample of payday lending in the state.

Duval County, which includes the city of Jacksonville, two recently closed facilities at Whitehouse Field and Cecil Field Naval Air Stations, Jacksonville Naval Air Station, and Mayport Naval Base, ranks first in the state for payday lending. However, because Duval County is so large, it is difficult to tell at the county level if the bases are specifically targeted by the payday lending industry.

Hillsborough County is second worst statewide and, like Duval County, has a military base, MacDill Air Force Base. Yet, because the base is located in a large city, Tampa, county-level analysis does not permit a reliable inference as to whether the payday lending density is caused by the presence of military personnel. Predictably, heavily populated areas such as Broward (Miami), Polk, and Orange Counties also rank poorly on our payday lending scale. The remaining military counties of note are Bay County (ranked eighth of 67), which contains Tyndall Air Force Base; Escambia County (ranked thirteenth of 67), home to the Pensacola Naval Air Station; and Okaloosa County (ranked eighteenth of 67), which is the principal county housing Eglin Air Force Base. Curiously, the sixth worst county is Hamilton County, which borders Georgia's Lowndes County, home of Moody Air Force Base.

⁴⁰⁶ Office of Financial Regulation, Fla. Dept. of Financial Serv., Licensing Data Download Site, <http://www.fldfs.com/OFR/licensing/download.htm> (last visited Oct. 17, 2005).

⁴⁰⁷ InfoUSA, ReferenceUSA, <http://www.ReferenceUSA.com> (last visited Oct. 17, 2005). ReferenceUSA is a commercially-prepared internet-based database sold to corporations and libraries which contains information on U.S. and Canadian businesses, health care providers, and consumers. *See id.*

Table 10. Florida: Top 30 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
NAS Jacksonville, NS Mayport MacDill AFB Avon Park AFB Bolling Range	Dade	776879	273	77	9.68	28.21	4	11	7	1	32.19	24.81
	Hillsborough	889948	384	87	8.71	22.86	3	15	12	2	56.94	20.66
	Polk	483924	204	41	8.47	20.10	8	16	14	3	32.43	8.57
	Broward	1623018	711	120	7.39	16.88	2	20	18	4	108.76	11.24
Tindall AFB	Gadsden	45087	7	5	11.09	71.43	33	6	2	5	3.02	1.98
	Hamilton	13327	3	3	22.51	100.00	40	1	1	6	0.89	2.11
	Bradford	26088	6	3	11.50	50.00	40	4	3	7	1.75	1.25
	Bay	148217	70	14	9.45	20.00	20	13	15	8	9.93	4.07
Clerk Hombred AFB	Jackson	46755	20	5	10.69	25.00	33	7	8	8	3.13	1.87
	Suwannee	34844	16	4	11.48	25.00	37	5	8	10	2.33	1.67
	Orange	896344	334	62	6.92	18.56	5	28	17	10	60.07	1.93
	Miami-Dade	2253362	938	154	6.83	16.42	1	30	20	12	151.00	3.00
NAS Pensacola offices	Clay	140814	46	11	7.81	22.92	24	17	11	13	9.44	3.56
	Escambia	294410	137	22	7.47	16.06	12	19	21	13	19.73	2.27
	Seminole	365196	173	27	7.39	15.61	9	21	23	15	24.47	2.53
	Calhoun	13017	8	2	15.36	25.00	43	3	8	16	0.87	1.13
Eglin AFB	Taylor	19256	7	2	10.39	28.57	43	9	6	17	1.29	0.71
	Ocala	170498	133	17	9.97	12.78	17	10	34	18	11.43	5.57
	Alachua	217955	101	16	7.34	15.84	18	23	22	19	14.61	1.39
	Madison	18733	9	2	10.68	22.22	43	8	13	20	1.26	0.74
MacDill AFB	Marion	258916	126	19	7.34	15.08	16	24	25	21	17.35	1.65
	Glades	10576	3	1	9.46	33.33	51	12	5	22	0.71	0.29
	Jefferson	12902	2	1	7.75	50.00	51	18	3	23	0.86	0.14
	Pulham	70423	25	5	7.10	20.00	33	26	15	24	4.72	0.28
Volusia	Leon	239452	108	16	6.68	14.81	18	32	27	25	16.05	-0.05
	Pasco	344765	145	21	6.09	14.48	13	36	29	26	23.10	-2.10
	Franklin	11057	16	2	18.09	12.50	43	2	35	27	0.74	1.26
	St. Lucie	192695	92	13	6.75	14.13	22	31	32	28	12.91	0.09
MacDill AFB	Volusia	443343	227	26	5.86	11.45	10	37	39	29	29.71	-3.71
	Pinellas	927482	497	51	5.53	10.26	7	39	42	30	61.75	-10.75

At the ZIP code level, it is easier to discern the location strategy of the payday lending industry in Florida. One of the ZIP codes adjacent to the Naval Air Station in Jacksonville (32210) ranks first in the state for total number of payday lenders (eleven) and ranks fifteenth worst of 916 ZIP codes statewide. Four and a half miles north of the base, on U.S. Highway 17, is ZIP code 32205. This ZIP code ranks second worst in the state. Together, these two ZIP codes have approximately 87,000 people, 24 banks, and 22 payday lenders—15.2 payday lenders above the statistical prediction based on this population. The intensity of payday lending witnessed around closed military facilities is not as evident in Jacksonville as we have seen elsewhere, even though the aforementioned ZIP code 32210 does border the abandoned Cecil Field. Also in the Jacksonville area is Mayport Naval Station; with its smallish force, the area has only two payday lenders in its adjacent ZIP codes.

MacDill Air Force Base in Tampa has three payday lenders in the ZIP code adjacent to it, and although this is one more than our statistical prediction, the total number is very modest, ranking this ZIP code out of the top 100 statewide. About five miles up U.S. 92, soldiers can find a group of Tampa ZIP codes containing over 50 payday lenders—33 more than one would predict given the population in that part of Tampa. Given its locale, this nearby density may undermine any greater payday lending density in the ZIP codes immediately adjacent to MacDill.

Tyndall Air Force Base has two adjacent ZIP codes, 32401 and 32404, that rank twenty-ninth and thirty-eighth, respectively, among Florida's 917 ZIP code regions for payday lending. Together they have 59,000 people, sixteen banks and ten payday lenders, about six payday lenders more than statistically projected for this population.

Eglin Air Force Base is massive and covers parts of several counties, but the ZIP code closest to the main gates at Eglin is Fort Walton Beach (ZIP 32548). This part of Fort Walton Beach has less than 22,000 people, but eight payday lenders, which is about seven more than its smallish population would suggest. These two statistics would likely put Fort Walton Beach in the top five statewide for payday lending, but like other resort areas, it also has a lot of banks (24) for its population, which drags the statistical composite ranking downward to forty-fourth. Mary Esther, a very small ZIP code also adjacent to the beach, is similar statistically, with only three payday lenders, but still two more than its small population would suggest.

The biggest military installation in Florida is the Air Station at Pensacola and, in relative terms, it has very few payday lenders. ZIP code 32507, which essentially encloses the base, has about 28,700 people, nine banks, and five payday lenders. This is about three lenders more than we expected given the population. This same ZIP code, though better off than most military areas, still ranks thirty-first worst out of 916 ZIP codes statewide and is much more crowded with payday lenders than the other seven ZIP codes in and around Pensacola.

Pensacola Air Station was chosen for additional street-level analysis because of its large troop levels and its peculiar infrequency of payday lending at the ZIP code level. At this resolution, we found that the greatest concentration of payday lenders in the Pensacola area was in a highway corridor just north of the base. Within three miles of the base there are at least four payday lenders, but a greater concentration of payday lending can be found if the buffer is drawn around the enlisted housing annex at Corry Station. Six payday lenders can be found within three miles of it, making it easily one of the heaviest concentrations of such activity in the region.

7. Idaho

Idaho payday loan legislation strongly favors lenders. It does not include any limitation on interest rates.⁴⁰⁸ On the contrary, like Arizona, Idaho law specifically provides that payday loan fees “shall not be deemed interest for any purpose of law.”⁴⁰⁹ Idaho allows three rollovers with a new round of fees for each.⁴¹⁰ While lenders are not supposed to issue a payday loan for the purpose of allowing the borrower to pay off an existing payday loan from the same lender,⁴¹¹ the statute does not appear to address paying off one payday lender with the proceeds of a loan from a different lender.

⁴⁰⁸ IDAHO CODE § 28-46-412 (2005).

⁴⁰⁹ *Id.* § 28-46-412(3). Lenders may further assess a fee of up to \$20 for any check that bounces or is returned for insufficient funds. *Id.* § 28-46-413(3).

⁴¹⁰ *Id.* §§ 28-46-413(6), 28-46-412(5)(b).

⁴¹¹ *Id.* § 28-46-413(2).

Idaho, with approximately 1.3 million people, is the least populous state in the survey, but still has about 160 payday lenders, or roughly 12.4 per 100,000 people.⁴¹² Idaho's small population, both statewide and in many of the counties and ZIP codes, and the relatively small military presence in Idaho make it a curiosity in terms of our study, but perhaps representative of conditions in a rural, Mountain West state.

Mountain Home Air Force Base, home to just over 4000 troops, is in Elmore County. Elmore ranks ninth out of 44 counties in our composite score for payday lending. Mountain Home, ZIP code 83647, ranks sixth out of 251 ZIP code areas in the state with a ratio of four payday lenders to every seven banks. Although four payday lenders may seem insignificant, it is still double what one would expect in Idaho given the tiny population of Mountain Home (16,600). Two of the four payday lenders list their address as "Airbase Road," clearly indicating their target demographic.

⁴¹² STATE OF IDAHO, DEPARTMENT OF FINANCE, PAYDAY LENDERS LIST (November 26, 2003), http://finance.state.id.us/industry/icc_lists.asp.

Table 12. Idaho: Top 30 ZIP Codes Ranked by Payday Lending

ZIP	Town or City	Payday	Exp	Banks	PD/100K	R	R	LQ	Composite
Nearby Base		PD				PD	PC	Rnk	Rank
83201	POCATELLO	16	4.45	13	44.43	1	2	4	1
83404	IDAHO FALLS	8	2.26	1	43.82	3	3	3	2
83714	GARDEN CITY	6	0.97	6	76.33	8	1	5	3
83864	SANDPOINT	6	2.04	7	36.43	8	4	11	4
83338	JEROME	4	1.92	7	25.71	11	11	13	5
83647	MOUNTAIN HOME	4	2.05	7	24.11	11	12	13	6
83687	NAMPA	3	2.36	0	15.74	17	23	1	7
83709	BOISE	5	4.32	5	14.32	10	26	5	7
83501	LEWISTON	7	4.05	14	21.39	5	14	23	9
83704	BOISE	8	4.82	17	20.54	3	15	24	9
83651	NAMPA	7	2.56	18	33.79	5	5	33	11
83301	TWIN FALLS	12	5.25	26	28.29	2	9	32	11
83536	KAMIAH	1	0.45	1	27.45	31	10	5	13
83815	COEUR D'ALENE	3	2.83	0	13.12	17	28	1	13
83703	BOISE	4	3.22	7	15.35	11	24	13	15
83211	AMERICAN FALLS	2	0.73	4	33.70	25	6	20	16
83313	BELLEVUE	1	0.39	2	32.02	31	7	16	17
83814	COEUR D'ALENE	7	2.76	20	31.40	5	8	42	18
83276	SODA SPRINGS	1	0.55	2	22.34	31	13	16	19
83333	HAILEY	2	1.22	4	20.29	25	16	20	20
83318	BURLEY	3	1.97	8	18.87	17	17	27	20
83202	POCATELLO	2	2.03	2	12.18	25	31	5	20
83705	BOISE	4	3.25	11	15.22	11	25	30	23
83221	BLACKFOOT	3	2.90	6	12.78	17	29	22	24
83686	NAMPA	3	3.80	4	9.76	17	39	12	24
83619	FRUITLAND	1	0.75	2	16.60	31	22	16	26
83716	BOISE	1	1.15	1	10.77	31	36	5	27
83706	BOISE	4	3.68	12	13.45	11	27	34	27
83467	SALMON	1	0.71	3	17.54	31	19	24	29
83805	BONNERS FERRY	1	0.73	3	17.00	31	20	24	30

8. Kentucky

In Kentucky, payday lenders may charge fees equating to an effective annual interest rate of 459%.⁴¹³ However, Kentucky law is clear that this charge is a “service fee,” *not* interest.⁴¹⁴ As a result, payday lenders are not subject to the Commonwealth’s interest rate cap of 19%.⁴¹⁵ In the event that a borrower’s check bounces, a lender may charge, in addition to its service fee, a returned check fee in any amount, so long as that amount is disclosed to the borrower in the original loan documents.⁴¹⁶ Once a lender extends a payday loan to a borrower, the lender may not enter into any further payday loan transactions with the same borrower until the original loan is terminated.⁴¹⁷ However, a consumer may enter into a second payday loan transaction at any one time, provided that the loans are from two different lenders and that the aggregate amount of the loans does not exceed \$500.⁴¹⁸ Finally, a lender may not renew, roll over, or consolidate a payday loan, unless it does so without charging the borrower a fee.⁴¹⁹

⁴¹³ KY. REV. STAT. ANN. § 368.100(2) (West 2004). Specifically, a payday loan fee may not exceed 15% of the face amount of the check. *Id.* For example, for every \$100 check written, the borrower receives \$85 while the lender receives \$15. As a result, the borrower actually incurs a charge of 17.65%; assuming an average payday loan duration of fourteen days, the borrower is charged an effective annual percentage rate of 459%.

⁴¹⁴ *Id.*

⁴¹⁵ *See id.* § 360.010(1).

⁴¹⁶ *Id.* § 368.102(3).

⁴¹⁷ *Id.* § 368.100(10).

⁴¹⁸ KY. REV. STAT. ANN. § 368.100(11) (West 2004).

⁴¹⁹ *Id.* § 368.100(15).

According to the Kentucky Department of Financial Institutions, the Commonwealth has 583 payday lenders.⁴²⁰ At the county level, the state's two military counties stand out statistically. The worst county in the state for payday lending is Christian County, where most of the troops at Fort Campbell live. It has 21 banks and eighteen payday lenders for its roughly 72,000 people. This is nearly 25 payday lenders per 100,000 and seven more than statistically expected for the population here, which includes the Kentucky component of the on-base population. Ranking fifth out of 120 counties in Kentucky is Hardin County, home to Fort Knox. Ironically, this county has 22 payday lenders to its 38 banks for its nearly 100,000 people. By comparison, Fayette County, which includes metropolitan Lexington and 260,000 people, has only four more payday lenders, but 63 more banks.

⁴²⁰ COMMONWEALTH OF KENTUCKY, DEPARTMENT OF FINANCIAL INSTITUTIONS, PAYDAY LENDER LIST (June 15, 2004) (on file with authors) (provided in digital format by authors' request).

Table 13. Kentucky: Top 30 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD	Lnds	PD/100	K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Rnk Bnk	Cmpsit Rank	Exp PD	Obs -Exo
Fort Campbell	Christian	72285	21	19	24.31	85.71	8	72.22	8	6	11	2	1	10.42	6.53
	Henderson	44829	18	13	29.00	72.22	8	6	6	8	2	6.47	2	6.47	6.53
	Johnson	23445	9	7	29.86	77.78	23	4	5	3	3.38	3.62	3	3.38	3.62
	McCracken	65514	24	15	22.90	62.50	6	15	12	4	9.45	5.55	4	9.45	5.55
Fort Knox	Hardin	94174	38	22	23.36	57.89	3	13	15	5	13.91	8.94	5	13.91	8.94
	Graves	37028	11	9	24.31	81.82	18	12	4	5	5.34	3.66	5	5.34	3.66
	Jessamine	39041	16	10	25.61	62.50	13	9	12	5	5.63	4.37	5	5.63	4.37
	Boyle	27697	18	10	36.10	55.56	13	2	19	5	4.00	6.00	5	4.00	6.00
	Knox	31795	15	9	28.31	60.00	18	7	14	9	4.59	4.41	9	4.59	4.41
	Caldwell	13060	6	5	38.28	83.33	36	1	3	10	1.88	3.12	10	1.88	3.12
	Warren	92522	42	21	22.70	50.00	4	16	21	11	13.35	7.65	11	13.35	7.65
	Taylor	22927	12	7	30.53	58.33	23	3	17	12	3.31	3.69	12	3.31	3.69
	Rowan	22094	9	6	27.16	66.67	29	8	10	13	3.19	2.81	13	3.19	2.81
	Wayne	19923	7	5	25.10	71.43	36	10	9	14	2.87	2.13	14	2.87	2.13
	Bell	30060	13	7	23.29	53.85	23	14	20	15	4.34	2.66	15	4.34	2.66
	Hopkins	46519	21	10	21.50	47.62	13	20	26	16	6.71	3.29	16	6.71	3.29
	Carter	26889	10	6	22.31	60.00	29	17	14	17	3.88	2.12	17	3.88	2.12
	Mason	16800	10	5	29.76	50.00	36	5	21	18	2.42	2.58	18	2.42	2.58
	Franklin	47687	22	10	20.97	45.45	13	24	27	19	6.88	3.12	19	6.88	3.12
	Pulaski	56217	30	12	21.35	40.00	10	21	34	20	8.11	3.89	20	8.11	3.89
	Clark	33144	16	7	21.12	43.75	23	23	30	21	4.78	2.22	21	4.78	2.22
	Lawrence	15569	4	3	19.27	75.00	48	30	6	22	2.25	0.75	22	2.25	0.75
	Breathitt	16100	4	3	18.63	75.00	48	31	6	23	2.32	0.68	23	2.32	0.68
	Calloway	34177	12	6	17.56	50.00	29	35	21	23	4.93	1.07	23	4.93	1.07
	Scott	33061	19	7	21.17	36.84	23	22	42	25	4.77	2.23	25	4.77	2.23
	Knott	17649	3	3	17.00	100.00	48	39	1	26	2.55	0.45	26	2.55	0.45
	Perry	29390	15	6	20.42	40.00	29	28	34	27	4.24	1.76	27	4.24	1.76
	Barren	38033	18	7	18.41	38.89	23	32	40	28	5.49	1.51	28	5.49	1.51
	Clay	24556	6	4	16.29	66.67	42	44	10	29	3.54	0.46	29	3.54	0.46
	Bourbon	19360	9	4	20.66	44.44	42	27	28	30	2.79	1.21	30	2.79	1.21

The county in Tennessee serving Fort Campbell's soldiers is Montgomery County. It has 21 payday lenders for its 134,000 residents, including those on-base. In terms of total number of lenders, it ranks thirteenth among Tennessee's 95 counties, but in terms of per capita density, Montgomery ranks in the middle percentile.

At the ZIP code level, locations adjacent to military bases appear highly attractive to payday lenders. The top four ZIP code regions in the state are all located near the state's only two military bases. Radcliff (ZIP 40160), which lies adjacent to Fort Knox Army Base, has the greatest composite density of payday lenders in the state. Though home to only 24,000 people and six banks, it has managed to attract twelve payday lenders, 8.6 more than statistically predicted. Radcliff ranks poorly in virtually all of our statistical categories and is the single most targeted location in the state of Kentucky for payday lending.

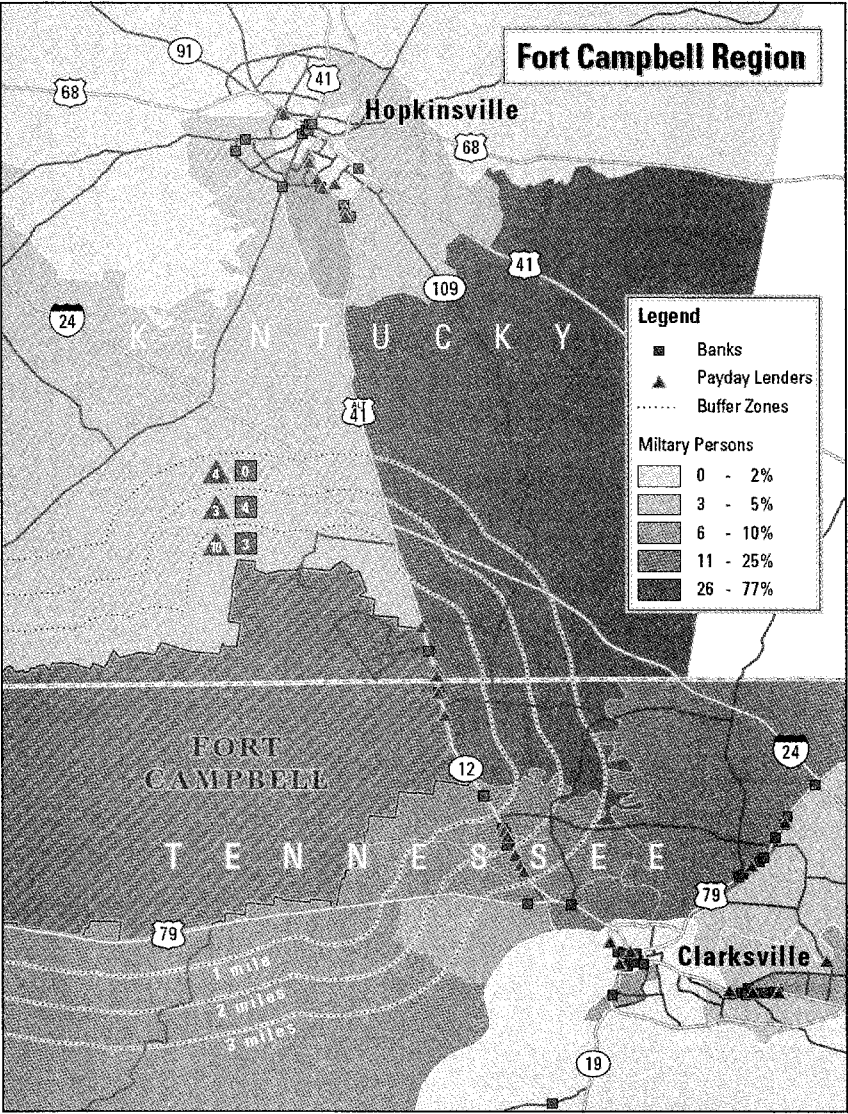
Oak Grove, probably the place most soldiers at Fort Campbell would go for a payday loan, has eight lenders to choose from, but only one bank. With less than 8000 people in Oak Grove, statewide averages predict only one payday lender in this ZIP code, unless you include the more than 20,000 soldiers stationed at Fort Campbell. Even when we added those soldiers to Oak Grove's population, there are still 3.5 payday lenders beyond the expected number. Hopkinsville and Clarksville, Tennessee, which sandwich Oak Grove on Highway 41, offer another ten payday lenders for the soldiers at Fort Campbell to choose from. The density of nearby competition, both in Kentucky and just across the border in Tennessee, makes the number of payday lenders in Oak Grove even more statistically dramatic.⁴²¹

⁴²¹ For a closely related discussion of payday lending in Tennessee, see *infra* Section IV.B.17.

Table 14. Kentucky: Top 30 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday	Exp	Banks	PD/100K	RPD	R	PC	LQ	Composite Rank
FL Kiosk-10	40219	LOUISVILLE	6	5.03	14.0	42.95	1	19	14	3	3
FL Kiosk-10	40216	LOUISVILLE	15	5.75	16.0	37.42	1	26	32	4	4
	42066	MAYFIELD	9	3.26	9.0	39.74	16	22	15	5	5
	40422	DANVILLE	10	3.30	14.0	43.72	8	17	34	6	6
	41240	PAINTSVILLE	7	1.20	10.0	84.28	23	9	31	7	7
	40404	BEREA	3	0.06	0.0	704.23	63	1	1	8	8
	42445	PRINCETON	5	1.64	5.0	43.83	34	16	15	8	8
	42420	HENDERSON	13	5.28	18.0	35.49	3	29	37	10	10
	40218	LOUISVILLE	9	4.42	8.0	29.36	16	45	13	11	11
	40356	NICHOLASVILLE	10	4.46	13.0	32.30	8	40	26	11	11
	42104	BOWLING GREEN	9	2.99	14.0	43.37	16	18	41	13	13
	40505	LEXINGTON	9	3.80	12.0	34.14	16	34	27	14	14
	41822	HINDMAN	3	0.44	3.0	98.96	63	6	15	15	15
	42330	CENTRAL CITY	4	1.41	3.0	40.94	51	21	12	15	15
	40965	MIDDLESBORO	6	2.02	9.0	42.69	30	20	35	17	17
	41143	GRAYSON	5	1.88	7.0	38.24	34	25	28	18	18
	41653	PRESTONSBURG	5	1.52	8.0	47.36	34	15	39	19	19
FL Kiosk-10	42001	PADUCAH	11	4.07	20.0	38.91	5	24	66	21	21
	42501	SOMERSET	10	2.34	20.0	61.67	8	12	78	22	22
	42765	MUNFORDVILLE	3	0.71	4.0	61.22	63	13	23	23	23
	40701	CORBIN	10	4.06	17.0	35.49	8	30	61	23	23
	42633	MONTICELLO	5	2.33	7.0	30.88	34	42	28	25	25
	40351	MOREHEAD	6	2.87	9.0	30.10	30	44	35	26	26
	42367	POWDERLY	1	0.13	0.0	106.95	104	4	3	27	27
	41815	ERMINE	1	0.15	0.0	96.81	104	7	3	28	28
	41230	LOUISA	3	1.31	3.0	32.91	63	37	15	29	29
	42718	CAMPBELLSVILLE	7	3.26	12.0	30.93	23	41	52	30	30
	42431	MADISONVILLE	9	3.96	16.0	32.72	16	38	62	30	30

The Fort Campbell area was also chosen for street-level analysis, and at this resolution, the pattern is remarkable. As illustrated in Map 4, within three miles of the main entrance to the base, we located seventeen payday lenders and ten banks. Outside the three-mile buffer in the surrounding region there are 23 payday lenders and 69 banks. Twenty-four of the 41 total payday lenders in the region are located on Fort Campbell Boulevard.



9. Louisiana

Payday lenders in Louisiana operate under the authority of the Deferred Presentment and Small Loan Act (DPSLA).⁴²² The DPSLA allows lenders to charge interest rates of as much as 520%,⁴²³ well exceeding Louisiana's usury law prohibiting conventional interest in excess of 12%.⁴²⁴ The Act prohibits lenders from extending payday loans that exceed a term of 60 days⁴²⁵ or are for an amount greater than \$350.⁴²⁶ If the borrower cannot repay a payday loan on time, the lender may continue charging interest, but at a reduced rate (36% annual interest during the first 365 days following the extension, and then 18% annual interest thereafter).⁴²⁷ If the borrower's check bounces for any reason upon the lender's attempted deposit, the lender may recover a returned check fee.⁴²⁸ The Act's protections for consumers are minimal—lenders may not divide a payday loan into multiple agreements for the purpose of charging a higher fee,⁴²⁹ nor may they renew or roll over a payday loan.⁴³⁰ However, a lender may make a new payday loan to a borrower if the borrower pays off at least 25% of the original loan.⁴³¹

Louisiana has two major military installations: the Army's Fort Polk and Barksdale Air Force Base. Louisiana also has 685 payday lenders and 1524 banks.⁴³² Because it has about 4.5 million people, it ranks sixth among the 20 states in our survey in terms of the density of payday lending but better than most of the other southern states in our survey.

⁴²² LA. REV. STAT. ANN. §§ 9:3578.1 to 9:3578.8 (2004).

⁴²³ *Id.* § 9:3578.4.A. Specifically, the Act allows a payday lender to charge a fee of 16.75% "of the face amount of the check issued." *Id.* Consequently, a consumer borrowing \$100 must write a check for \$120, which is the equivalent of 20% interest. Assuming an average loan duration of fourteen days, Louisiana's DPSLA allows payday lenders to charge an annual interest rate of 520%.

⁴²⁴ *Id.* § 9:3500.C.

⁴²⁵ *Id.* § 9:3578.3(6).

⁴²⁶ *Id.* § 9:3578.3(2)(c).

⁴²⁷ LA. REV. STAT. ANN. § 9:3578.4.A (2004).

⁴²⁸ *Id.* § 9:3578.4.B. The returned check fee must be for the same amount that the lender's banking institution charged the lender for returning the check. *Id.* However, this returned check fee may be assessed only one time per check, regardless of the number of times that the check was returned to the lender by the lender's bank. *Id.*

⁴²⁹ *Id.* § 9:3578.6.A(4).

⁴³⁰ *Id.* § 9:3578.6.A(7).

⁴³¹ LA. REV. STAT. ANN. § 9:3578.6.A (2004).

⁴³² STATE OF LOUISIANA, DEPARTMENT OF FINANCIAL INSTITUTIONS, PAYDAY LENDER LIST (2001) (on file with authors) (list mailed on authors' request).

Louisiana has many places where quick loans would seem popular, from the third-world like poverty of the Delta, to the swamps of the Achafalaya Basin, to the streets of New Orleans. The swampy St. Martin's Parish has the worst payday lending numbers in the state at the county level. The second and third worst parishes are two less likely candidates for payday lending, until you factor in military demographics.⁴³³ Bossier Parish, home to Barksdale Air Force Base, has almost 100,000 people, 22 banks, and 24 payday lenders, about eight more than expected. These statistics rank it second worst among the 64 parishes in Louisiana. Vernon Parish ranks third worst, and with just over 50,000 people and fourteen banks, its fourteen payday lenders are well above what one would expect in rural Louisiana were it not for the presence of Fort Polk in the heart of Vernon Parish.

⁴³³ Parishes are the functional and geographic equivalent of counties in Louisiana.

Table 15. Louisiana: Top 30 Parishes Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	K Pop	PD/100	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
St. Martin	St. Martin	48583	17	17	34.99	100.00	13	2	4	1	7.45	9.55	
Barataria, Lafourcade	Barataria	98310	22	24	24.41	100.00	9	8	3	2	15.02	8.93	
Fort Polk	Vermilion	52531	13	14	25.85	100.00	15	7	4	3	8.05	5.95	
Concordia	Concordia	20247	6	7	34.57	116.67	23	3	2	4	3.10	3.90	
Allen	Allen	25440	9	7	27.52	77.78	23	6	6	5	3.90	3.10	
St. Helena	St. Helena	10525	3	4	38.00	133.33	34	1	1	6	1.61	2.39	
E. Baton Rouge	E. Baton Rouge	412852	140	75	18.17	53.57	1	20	16	7	63.28	11.72	
Terrebonne	Terrebonne	100588	34	21	20.88	61.76	10	14	14	8	15.42	5.58	
Rapides	Rapides	126337	52	27	21.37	51.92	7	12	19	8	19.36	7.64	
Acadia	Acadia	58861	21	13	22.09	61.90	16	10	13	10	9.02	3.98	
Franklin	Franklin	21263	9	6	28.22	66.67	28	5	9	12	3.26	2.74	
Claiborne	Claiborne	16851	7	5	29.67	71.43	32	4	8	13	2.58	2.42	
Webster	Webster	41831	17	9	21.52	52.94	20	11	17	14	6.41	2.59	
LaFourche	LaFourche	89974	41	20	22.23	48.78	12	9	27	14	13.79	6.21	
Ouachita	Ouachita	147250	64	30	20.37	48.88	5	16	28	16	22.57	7.43	
Lincoln	Lincoln	42509	18	9	21.17	50.00	20	13	20	17	6.52	2.48	
St. John B.	St. John B.	43044	9	7	16.26	77.78	23	26	6	18	6.60	0.40	
Morehouse	Morehouse	31021	9	6	19.34	66.67	28	18	9	18	4.75	1.25	
Jefferson	Jefferson	455466	130	65	14.27	50.00	2	34	20	20	69.81	-4.81	
St. Bernard	St. Bernard	67229	19	10	14.87	52.63	19	31	18	21	10.30	-0.30	
Red River	Red River	9822	3	2	20.79	66.67	46	15	9	22	1.47	0.53	
Ascension	Ascension	76627	22	11	14.36	50.00	18	33	20	23	11.75	-0.75	
Iberia	Iberia	73266	31	13	17.74	41.94	16	21	34	23	11.23	1.77	
Catahoula	Catahoula	183577	70	28	15.25	40.00	6	30	35	23	28.14	-0.14	
Jackson	Jackson	15397	5	3	19.48	60.00	42	17	15	26	2.36	0.64	
Terrebonne	Terrebonne	104503	36	16	15.31	44.44	14	29	31	26	16.02	-0.02	
St. Mary	St. Mary	53500	20	9	16.82	45.00	20	25	30	28	8.20	0.80	
Union	Union	22803	8	4	17.54	50.00	34	23	20	29	3.50	0.50	
Orleans	Orleans	484674	104	48	9.90	46.15	3	46	29	30	74.29	-26.29	

At the ZIP code level, the pattern is similar. Two ZIP codes in Baton Rouge have the worst ranking for payday lending statewide, but military-adjacent ZIP codes in Louisiana are not absent from our rankings. ZIP codes 71112 and 71111, which flank Barksdale Air Force Base in Bossier City, rank fifth and ninth in the state respectively. These two ZIP codes have fifteen banks and 23 payday lenders serving roughly 57,000 people, or fourteen more than statistically expected given their combined populations. The second highest composite density ZIP code in the state (71118) is just across the river in Shreveport. Its fifteen payday lenders are available to service men and women at Barksdale after only a short and commonly made trip across the Red River into Shreveport.

Table 16. Louisiana: Top 28 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday	Exp	Banks	PD/100	RPD	R	PC	LQ	Composite Rank
	70806	BATON ROUGE	19	4.16	10.0	70.05	1	3	9	1	1
Barksdale - 7 m	71118	SHREVEPORT	15	3.66	8.0	62.85	5	8	10	2	2
	70815	BATON ROUGE	16	4.44	10.0	55.23	2	12	14	3	3
	70538	FRANKLIN	8	2.30	5.0	53.38	21	14	15	6	6
	71301	ALEXANDRIA	16	3.70	19.0	66.22	2	5	50	7	7
	70127	NEW ORLEANS	11	4.67	8.0	36.10	11	29	17	7	7
	70403	HAMMOND	9	3.26	7.0	42.28	17	21	20	9	9
	71373	VIDALIA	4	1.15	2.0	53.33	55	15	11	11	11
	70058	HARVEY	11	6.40	8.0	26.32	11	53	17	11	11
	70401	HAMMOND	8	2.59	9.0	47.35	21	17	46	13	13
	71463	OAKDALE	5	1.70	4.0	45.08	44	19	23	14	14
	71040	HOMER	4	1.10	3.0	55.91	55	11	21	15	15
	70601	LAKE CHARLES	16	5.38	22.0	45.56	2	18	67	15	15
	70121	NEW ORLEANS	4	1.99	1.0	30.77	55	35	7	17	17
	70053	GRETNA	7	2.67	8.0	40.14	28	23	47	18	18
	70380	MORGAN CITY	8	3.57	11.0	34.38	21	31	57	19	19
	70126	NEW ORLEANS	8	6.28	3.0	19.52	21	80	8	19	19
	71201	MONROE	15	3.35	26.0	68.63	5	4	101	21	21
	70052	GRAMERCY	2	0.48	1.0	64.14	94	6	12	22	22
	70363	HOUMA	7	4.39	6.0	24.41	28	62	26	23	23
	70043	CHALMETTE	9	4.92	12.0	28.05	17	46	53	23	23
	70458	SLIDELL	10	5.01	14.0	30.55	14	37	65	23	23
Barksdale - 4 m	71103	SHREVEPORT	3	1.63	0.0	28.25	72	45	1	26	26
	70062	KENNER	6	2.91	7.0	31.62	37	33	48	26	26
	71079	SUMMERFIELD	1	0.02	0.0	847.46	116	1	2	28	28
	70714	BAKER	5	3.10	3.0	24.72	44	59	16	28	28
	70506	LAFAYETTE	8	5.55	7.0	22.10	21	71	27	28	28

The composite score for payday lending is fourth highest in Leesville (ZIP 71446). Leesville has 12 banks and 14 payday lenders for its approximately 24,000 people—10.33 more payday lenders than the population would suggest, even if the population of soldiers at Fort Polk were included.

Leesville was selected for additional neighborhood analysis, which revealed that payday lenders were crowded around the main entrance to Fort Polk and less frequent in Leesville itself, which lies some six miles up Louisiana Highway 171. We found six payday lenders and one bank located less than a mile from Fort Polk's border. In the three-mile buffer, we were able to map fourteen payday lenders and ten banks, but upon closer inspection we found that five of the payday lenders were crammed along Entrance Road, located within a mile of the base. Soldiers traveling to Leesville would pass five additional payday lenders in the next two miles. In Leesville itself, there were only three payday lenders, only one of which was not on the main route toward the base.

10. *Missouri*

Missouri's payday lending law is one of the most creditor-friendly in the nation. The statute actually authorizes lenders to charge fees equating to an annual interest rate of 1950%.⁴³⁴ Lenders are also essentially free to turn these loans into long-term obligations by allowing borrowers to renew six times, so long as the borrower pays down the loan by at least five percent upon each renewal.⁴³⁵ Lenders may not accept repayment out of the proceeds of another payday loan made by the same or an affiliated lender.⁴³⁶ However, lenders are not required to use a unified system to track whether consumers have more than one loan outstanding with other non-affiliated lenders.

Missouri is another state with a large number and high density of payday lenders. There are roughly 5.6 million people in Missouri, and they have some 2193 banks and 1138 payday lenders from which to choose.⁴³⁷ There are more than 20 payday lenders per 100,000 people in the state, ranking it fifth worst among the 20 states in our survey. Fort Leonard Wood and Whiteman Air Force Base are the only significant military installations in the state. Because Fort Leonard Wood has many missions and functions partly as a training facility,

⁴³⁴ A lender in Missouri may charge 75% interest on any payday loan. MO. REV. STAT. § 408.505(3) (2005). Assuming an average loan duration of fourteen days, this equates to an eye-popping annual rate of 1950%. It should be noted, however, that the 75% in interest authorized by Missouri law applies to the total of the initial loan and up to six renewals. *Id.* §§ 408.505(3), 408.500(6).

⁴³⁵ *Id.* § 408.500(6).

⁴³⁶ *Id.* § 408.505(5).

⁴³⁷ STATE OF MISSOURI, DIVISION OF FINANCE, SECTION 408.500, SMALL, SMALL LOAN COMPANIES (Dec. 16, 2004), <http://www.missouri-finance.org/pdfs/smallsmallloans.pdf>.

estimates of its population vary from just over 10,000 to more than 20,000 personnel, many of whom are from branches other than the Army.⁴³⁸ Whiteman Air Force Base houses approximately 4000 service persons.

With sixteen payday lenders and just over 41,000 people, Pulaski County, home to Fort Leonard Wood, ranks eleventh of 115 counties in terms of the number and density of payday lending. Neighboring Laclede County ranks tenth in the state, despite its isolation in south-central Missouri.

⁴³⁸ Two sources from the DOD provide divergent estimates of troop levels at Fort Leonard Wood. The DOD's Base Structure Report estimates roughly 20,000 troops and the DOD's Directorate of Information, Operations and Reports estimates troops to be around 10,000. DEPARTMENT OF DEFENSE, *supra* note 284; DIRECTORATE FOR INFORMATION OPERATIONS AND REPORTS, STATISTICAL INFORMATION ANALYSIS DIVISION WORK FORCE PUBLICATIONS (Fiscal Year 2004), http://www.dior.whs.mil/mmmd/L03/fy04/ATLAS_2004.pdf.

Table 17. Missouri: Top 30 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
	Dunklin	33155	15	23	69.37	153.33	11	1	1	1	6.75	16.25
	Scott	40422	17	24	59.37	141.18	8	3	2	1	8.22	15.78
	S.Francois	55641	23	24	43.13	104.35	8	12	4	3	11.32	12.68
	Barry	34010	26	22	64.69	84.62	14	2	14	4	6.92	15.08
	Butler	40867	19	19	46.49	100.00	17	10	5	5	8.31	10.69
	Howell	37238	19	18	48.34	94.74	19	8	9	6	7.58	10.42
	Vernon	20454	9	10	48.89	111.11	30	7	3	7	4.16	5.84
	Stoddard	29705	21	16	53.86	76.19	20	5	17	8	6.04	9.96
	Newton	52636	19	19	36.10	100.00	17	25	5	9	10.71	8.29
	Laclede	32513	13	13	39.98	100.00	25	18	5	10	6.61	6.39
Fort Leonard Wood	Pulaski	41165	17	16	39.67	94.12	20	20	10	11	8.37	7.53
	Moniteau	14827	9	8	53.96	88.89	38	4	12	12	3.02	4.98
	Randolph	24663	11	10	40.55	90.91	30	16	11	13	5.02	4.98
	Mississippi	13427	7	6	44.69	85.71	44	11	13	14	2.73	3.27
	Polk	26992	13	10	37.05	76.92	30	23	15	14	5.49	4.51
	Henry	21997	18	11	50.01	61.11	28	6	35	16	4.48	6.52
	Taney	39703	23	15	37.78	65.22	23	22	31	17	8.08	6.92
Fort Leonard Wood	Phelps	38625	18	13	32.64	72.22	25	30	22	18	8.10	4.90
	Greene	240391	108	65	27.04	60.19	3	43	36	19	48.91	16.09
	Webster	31045	14	10	32.21	71.43	30	31	23	20	6.32	3.68
	Franklin	93807	39	25	26.65	64.10	7	44	34	21	19.08	5.92
	Wright	17955	10	7	38.99	70.00	40	19	27	22	3.65	3.35
	Grundy	10432	7	5	47.93	71.43	55	9	23	23	2.12	2.88
	Saline	23756	14	9	37.89	64.29	36	21	32	24	4.83	4.17
	Andrew	16492	5	5	30.32	100.00	55	35	5	25	3.36	1.64
	Livingston	14558	10	6	41.21	60.00	44	15	37	26	2.96	3.04
	Pemiscot	20047	8	6	29.93	75.00	44	37	18	27	4.08	1.92
Fort Leonard Wood	Texas	23003	10	7	30.43	70.00	40	34	27	28	4.66	2.32
	Cape	68693	35	20	29.12	57.14	16	41	44	28	13.98	6.02
	Girardeau											
	Perry	18132	9	6	33.09	66.67	44	29	29	30	3.69	2.31

At the ZIP code level, the effect of the base on Fort Leonard Wood's tiny gateway town is evident. Although St. Robert has only 5200 people, apparently enough to support only two banks, eight payday lenders have decided it is a good location—seven more than necessary according to statistical predictions. Given the number and density of payday lending for this population, St. Robert is the second worst place in the state for this activity. While Whiteman Air Force Base has been somewhat spared of payday lenders, the tiny town of Windsor, less than five miles from the base on Route 23, has attracted as many payday lenders (four) as banks, thereby earning the town a ranking in the top 30 statewide for payday lending.

Table 18. Missouri: Top 30 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday	Exp	Banks	PD/100K	R	PC	RQ	Composite Rank
	63801	SIKESTON	21	4.71	10.0	90.72	1	24	31	1
Ft Larned Wood	63801	SAINT ROBERT	8	1.06	2.0	95.85	28	10	37	2
	63863	MALDEN	8	1.33	3.0	122.38	28	12	32	3
	63134	SAINT LOUIS	8	3.10	0.0	52.57	28	65	1	4
	64772	NEVADA	10	2.56	6.0	79.48	16	32	50	5
	63857	KENNETT	10	2.66	6.0	76.58	16	34	50	6
	63841	DEXTER	11	2.64	9.0	84.65	13	26	66	7
	63132	SAINT LOUIS	8	2.91	1.0	55.94	28	59	25	8
	63901	POPLAR BLUFF	19	6.74	16.0	57.33	2	57	65	9
	65270	MOBERLY	10	2.85	10.0	71.36	16	42	77	10
	63703	CP. GARDEAU	6	2.03	2.0	60.21	55	53	29	11
	65018	CALIFORNIA	6	1.52	4.0	80.28	55	31	54	12
	63640	FARMINGTON	12	4.66	10.0	52.34	10	68	68	13
	64054	INDEPENDENCE	4	0.85	2.0	95.33	87	20	43	14
	65625	CASSVILLE	6	1.29	6.0	94.46	55	21	77	15
	64118	KANSAS CITY	17	7.80	12.0	44.34	3	100	53	16
	65023	CENTERTOWN	2	0.32	0.0	127.71	144	11	2	17
	65020	CAMDENTON	7	2.09	6.0	68.00	42	46	71	18
	65723	PIERCE CITY	3	0.62	1.0	99.14	112	16	34	19
	63019	CRYSTAL CITY	4	0.79	3.0	103.20	87	15	61	20
	65536	LEBANON	13	5.28	12.0	50.07	7	82	76	21
	63664	POTOSI	6	1.73	5.0	70.40	55	44	70	22
	65613	BOLIVAR	8	3.07	8.0	52.95	28	64	77	22
	63074	SAINT ANN	7	3.10	3.0	46.00	42	91	40	24
	64124	KANSAS CITY	6	2.66	1.0	45.87	55	94	26	25
	64628	BROOKFIELD	5	1.26	5.0	80.53	72	30	77	26
	64133	KANSAS CITY	14	6.69	12.0	42.54	5	107	69	27
Whiteman AFB -4 mi	65360	WINDSOR	4	0.85	4.0	96.11	87	19	77	28
	65109	JEFFERSON CITY	12	7.21	4.0	33.85	10	149	28	29
	65453	CUBA	5	1.66	4.0	61.35	72	52	67	30

11. *New York*

Proponents of the payday lending industry have thus far failed to sway the New York state legislature to their cause. Unlike most states with a significant military presence, New York has steadfastly stood by its criminal and civil interest rate caps. Except where authorized, New York's civil usury law imposes a maximum interest rate of 16% per year.⁴³⁹ And New York also has a criminal usury law which makes lending at interest rates over 25% per annum a class E felony for first offenses, and a class C felony for subsequent offenses.⁴⁴⁰ To further reinforce the state's prohibition against payday lending, New York expressly bars check cashers from advancing money on postdated checks and requires them to deposit any checks cashed within one business day.⁴⁴¹ Regulatory authorities have also aggressively pursued payday lenders. The state banking department superintendent has unequivocally expressed disdain for banks that rent their charters, accusing them of abusing the public trust.⁴⁴² Similarly, the New York Attorney General has accused a Delaware-chartered state bank of criminally facilitating evasion of New York's usury laws.⁴⁴³ Nevertheless, the interaction between New York usury law and federal law preempting interest rate caps for banks presents an interesting legal puzzle. If payday lenders are correct in their argument that federal law legalizes "charter-renting," then the Supremacy Clause of the U.S. Constitution, under this theory, would make payday lending as legal in New York as in other states.

We included New York in our sample both because it is home to Fort Drum, a relatively significant Army post located near the "military town" of Watertown, New York, and because of the state's legal and financial importance. However, the regulatory climate in New York creates a challenging data collection problem. State authorities actively attempt to sue or prosecute businesses found to be engaged in payday lending, so authorities do not maintain a list of payday lenders. Similarly, payday lenders may not list their addresses or phone numbers

⁴³⁹ N.Y. BANKING LAW § 14-a (McKinney 2004); N.Y. GEN. OBLIG. LAW § 5-501. (McKinney 2004).

⁴⁴⁰ N.Y. PENAL LAW §§ 190.40, 190.42 (McKinney 2004).

⁴⁴¹ N.Y. BANKING LAW § 373 (McKinney 2004).

⁴⁴² Elizabeth McCaul, Superintendent of Banks, Industry Letter on Payday Loans (June 13, 2000), <http://www.banking.state.ny.us/lt000613.htm> ("[B]anks that choose to offer this type of loan product at exorbitant interest rates are blatantly abusing [federal] authority. These types of actions, when judged in the court of public opinion, can lead to a groundswell of outrage resulting in reputational harm and safety and soundness problems.").

⁴⁴³ *People v. County Bank of Rehoboth Beach*, No. 1:03-CV-1320 (N.D.N.Y. May 25, 2004), www.abanet.org/buslaw/committees/CL230044pub/links.shtml (subscription required).

in commonly available telephone directories or in any other business address database. A survey of directories in the Watertown, New York area near Fort Drum produced no listings for “Check and Cash Advances,” “Check Cashers,” or any other similar categories. In an effort to ensure that our data was as accurate and reliable as possible, we chose to conduct in-person field work at Fort Drum to verify the presence or absence of payday lending and/or businesses offering equivalent services. Our field work methodology was essentially a standard “windshield survey,” which involved driving the streets and highways of our target area, making note of and paying visits to establishments we suspect are making payday loans, and collecting address data and other useful information. In conducting our field work, we drove through all commercially-zoned areas within a five-mile radius of Fort Drum’s main gate and through every commercial district of nearby Watertown. Our search focused not only on lenders openly offering payday loans, but also businesses offering payday loans disguised as other transactions.

Our field work revealed two outlets in the Fort Drum region offering the functional equivalent of payday loans under the common façade of “catalog sales.”⁴⁴⁴ As discussed in Section II, catalog sales are a thin disguise aimed at illegally lending in excess of state usury laws. Subsequent to conducting our field work, the New York Attorney General’s office obtained a permanent injunction shutting down both of these lending operations, holding their owner personally liable for restitution.⁴⁴⁵ The Attorney General’s office has subsequently confirmed that these two payday lending locations near Fort Drum have now ceased operations.⁴⁴⁶ Combined with our field work, this verifies that unlike every other significant military installation in all 20 states we studied, there are essentially no payday lenders targeting military personnel in the Fort Drum area.⁴⁴⁷ The FDIC lists fifteen banks in Jefferson County, New York, the main home to Fort Drum. Based upon that statistic, this county ranks perhaps best of all the military counties in all 20 states included in our survey on all three counts: total number of payday lenders, per capita density, and ratio to banks.

⁴⁴⁴ See *infra* note 143 and accompanying text.

⁴⁴⁵ See *People v. JAG NY*, 794 N.Y.S.2d 488 (2005).

⁴⁴⁶ Telephone Interview with Mark D. Fleischer, Assistant N.Y. Att’y Gen. (Mar. 2, 2005).

⁴⁴⁷ Nevertheless, our field work did identify numerous other potential credit sources including traditional banks, credit unions, finance companies, rent-to-own furnishing stores, and pawn shops.

12. North Carolina

North Carolina provides an interesting contrast to New York. In 1997, North Carolina enacted legislation authorizing payday lending. This statute was comparable to those in many states included in our study in that it created a statutory mechanism allowing payday lenders to obtain licenses authorizing them to charge fees of 15% of the face amount of a borrower's check (an annual interest rate cap of 459%).⁴⁴⁸ However, the North Carolina legislature also included a four-year "sunset provision" on the special usury law. In August 2001, the legislature allowed the four-year experimental law to expire, despite venomous opposition by payday lenders.⁴⁴⁹ As a result, North Carolina law reverted to its traditional small loan law which caps the annual interest rate for small consumer loans at 36%.⁴⁵⁰ After 2001, payday lending became as illegal in North Carolina as it is in New York.

Nevertheless, nearly four years later, North Carolina has not been able to successfully stop payday lending in the state. Shortly after the payday lending law expired, state authorities began to order businesses to stop making payday

⁴⁴⁸ The 1997 law authorized payday loans that did not exceed a duration of 31 days or an amount of \$300. N.C. GEN. STAT. § 53-281(a), (b) (1997) (repealed 2001). It allowed lenders to charge interest of 15% of the amount of the face amount of the check the borrower used to borrow the money, or \$17.65 for every \$100 check. N.C. GEN. STAT. § 53-281(d) (1997) (repealed 2001). Assuming an average loan duration of fourteen days, payday lenders used to be able to charge an effective annual interest rate of 459%.

⁴⁴⁹ See CENTER FOR RESPONSIBLE LENDING, N.C. PAYDAY LENDING: HISTORY OF PAYDAY LENDING IN N.C., http://www.responsiblelending.org/predlend_nc/payday.cfm (last visited Oct. 17, 2005). The legislature allowed the law to sunset because it was concerned with the consumer protection issues arising from it. From 1999 to 2000, for example, the number of payday lending companies increased by 16%, with revenues rising by 28% to more than \$123 million. See Rick Rothacker, *Researchers Call For Payday Lending Reforms*, CHARLOTTE OBSERVER, Feb. 17, 2003, at 7D, <http://www.charlotte.com/mld/observer/5198784.htm?1c>. A study conducted by the North Carolina Banking Commissioner showed that 87% of North Carolina consumers rolled-over their loans at least one time with any given lender. OFFICE OF THE COMMISSIONER OF BANKS, REPORT TO THE GENERAL ASSEMBLY ON PAYDAY LENDING 6 (Feb. 22, 2001). Not counting debtors who borrowed from multiple locations, 38.3% of borrowers renewed their payday loan more than ten times. *Id.* About 14% of borrowers renewed their loans more than nineteen times a year with each lender. *Id.*

⁴⁵⁰ N.C. GEN. STAT. § 53-173(a) (2004) (imposing an interest rate cap of 36% for loans under \$600, and a cap of 15% on any amount loaned from \$600 to \$3000). This interest rate cap is a component of the North Carolina Consumer Finance Act (NCCFA). *Id.* §§ 53-164 to 53-191. Small loans under the NCCFA are generally limited to a duration of about two to four years, but lenders may refinance loans if necessary. *Id.* §§ 53-181(a)(9), 53-180(a) (2004). Lenders can also charge a five percent fee no more than twice a year. *Id.* § 53-173(a)(1) (2004).

loans.⁴⁵¹ A consumer advocacy organization reported that after the payday loan law sunset, some smaller payday lending companies sold out to larger chains while others reverted to their original check cashing business.⁴⁵² Many lenders simply continued to offer payday loans without licenses through catalog sales, sale-leaseback transactions, and other disguises.⁴⁵³ Other payday lenders turned to out-of-state banks and began payday lending under a charter-renting theory.⁴⁵⁴

State leaders and consumer protection attorneys have waged a continuing legal and political battle over the future of payday lending in the state. In 2002, for example, North Carolina Attorney General Roy Cooper filed suit against ACE Cash Express for offering payday loans in violation of the state's payday lending laws.⁴⁵⁵ Only a few months later, ACE agreed to stop its payday lending activities for one year and to pay civil penalties of \$325,000.⁴⁵⁶ In February 2003, North Carolina's Office of the Comptroller of the Currency filed suit against Advance America, Cash Advance Centers Inc., and Peoples National Bank for engaging in illegal payday lending transactions in the state. The parties eventually reached a settlement agreement, agreeing to end their payday lending arrangement in North Carolina; in addition, Peoples National Bank agreed to pay \$175,000 in civil penalties.⁴⁵⁷ Finally, in July 2004, consumers filed a series of lawsuits against Advance America, Check into Cash, and Check 'N Go, alleging that the lenders were exploiting poor people by luring them into quick loans that carry exorbitantly high interest rates.⁴⁵⁸

This regulatory uncertainty created data collection challenges in studying payday lender locations around North Carolina's important and large military installations. Because the state Commissioner of Banks has taken the position that payday lending is illegal in the state, it does not publish a list of payday lenders. However, it does maintain a list of companies licensed as check

⁴⁵¹ Richard Wagner, *Court Shuts Down Payday Lender*, CAROLINA J., Dec. 15, 2003, http://www.carolinajournal.com/articles/display_story.html?id=1241.

⁴⁵² CENTER FOR RESPONSIBLE LENDING, *supra* note 449.

⁴⁵³ *Id.*

⁴⁵⁴ *Id.* Using a charter-renting arrangement, as of mid-2004, Advance America was operating 114 stores in North Carolina, generating revenues of more than \$30 million per year, and two other payday lending outlets, Check 'N Go and Check Into Cash, together had one hundred stores in the state, bringing in combined revenues of \$28 million every year. See TRIAL LAWYERS FOR PUBLIC JUSTICE, CONSUMERS FILE CLASS ACTION LAWSUITS AGAINST THREE OF NORTH CAROLINA'S LARGEST PAYDAY LENDERS, July 28, 2004, http://www.tlpj.org/pr/nc_payday_072804.htm.

⁴⁵⁵ CENTER FOR RESPONSIBLE LENDING, *supra* note 449.

⁴⁵⁶ *Id.*

⁴⁵⁷ *Id.*

⁴⁵⁸ TRIAL LAWYERS FOR PUBLIC JUSTICE, *supra* note 454.

cashers.⁴⁵⁹ Many of the check cashers on this list are the very companies that are using charter-renting relationships with state banks to evade North Carolina's interest rate cap. However, other payday lenders that do not engage in simple check cashing are not included on this list, making it unsuitable for our purposes. Instead we painstakingly culled payday lender addresses statewide from current classified business and telephone directory listings.⁴⁶⁰ While significantly more time-consuming than state regulatory databases, use of classified business and telephone directories is widely accepted by social scientists conducting studies similar to ours.⁴⁶¹

Based on our analysis of classified directories, we estimate that 612 payday lenders currently serve North Carolina's eight million-plus people. When compared to the 2478 banks in the state, North Carolina ranks tenth of 20 states in our survey in the total number of payday lenders, and sixteenth in per capita

⁴⁵⁹ OFFICE OF THE COMMISSIONER OF BANKS, STATE OF NORTH CAROLINA, NORTH CAROLINA LICENSED CHECK CASHERS, <https://www.nccob.org/Online/CCS/CompanyListing.aspx> (last visited Oct. 17, 2005).

⁴⁶⁰ After searching dozens of business directories and telephone directories, we found that the most reliable and extensive directory of payday lenders was to be found in several on-line directories. We would have preferred to use the BellSouth Yellow Pages, available on-line through Yahoo.com, because this directory allowed us to look up businesses under the heading "Check and Cash Advances." Unfortunately, this database did not allow us to compile a comprehensive list of payday lenders for the entire state. After some searching, we found the business database Reference USA that offered statewide listings, but unfortunately did not list the same businesses as "Check and Cash Advances," rather listing them as "Check Cashing Services." After numerous trials in which we compared the directory listings provided by both services, we became confident that the Reference USA and the BellSouth Yellow Pages listings, though categorized under different headings, were essentially the same list. We concede that some businesses in both databases may offer only check-cashing services and not loans, but clearly the vast majority of those listed in the Reference USA database are offering loans and thus we chose to use the addresses in this database as a proxy for payday lenders. We would also like to note that the use of proxy variables is a common and accepted practice among social scientists and researchers who conduct studies similar to ours. From the Reference USA database, we compiled a list of 612 businesses that we will call payday lenders. Reference USA, Category Heading: Check Cashing Services, <http://www.referenceusa.com> (last viewed Oct. 17, 2005). Over half of the list is comprised of national payday lenders such as Advance America and Check N' Go. One hundred additional businesses on this list have words such as "loan," "advance," "payday," or "pawn" in their names, indicating that they too are offering loans.

⁴⁶¹ For example, John Caskey has used a similar technique to measure growth and distribution of check cashers and pawnshops. See JOHN P. CASKEY, FRINGE BANKING: CHECK-CASHING OUTLETS, PAWNSHOPS, AND THE POOR 46 n.6 (1994) ("A comparison of the number of pawnshop outlets listed in the classified pages of telephone books with the number reported by state regulators shows a generally close correspondence."). Because most lenders are anxious to advertise their services, telephone directories tend to provide business lists as accurate or more so than comparable government databases.

density of payday lenders at 7.60 per 100,000. This rate is much lower than its neighbors Tennessee and South Carolina, but still above the 6.64 per 100,000 density found in Virginia, despite the fact that under state law payday lending is legal in Virginia and illegal in North Carolina. There are six military bases in North Carolina with over 4000 troops, but the Marine Corps' Camp LeJeune (30,000) and the Army's Fort Bragg (40,000) are the largest. All told there are well over 100,000 active military personnel stationed in North Carolina.

The counties with the greatest number and density of payday lenders tend to be those with significant military activity. The county with the greatest composite ranking in the state is Wayne County, home of Seymour Johnson Air Force Base. Wayne County has 113,400 persons, 30 banks, and seventeen payday lenders, which is about 8.5 more than our statistical prediction.

Craven County, where the Marine Corps Air Station at Cherry Point is housed, ranks fourth worst in the state. Cumberland County, which shares Fort Bragg and encloses Pope Air Force Base, has an estimated 32 payday lenders, ranking it third in the state for sheer volume and sixth worst out of 101 counties on our composite payday lending score. Not far behind is Onslow County, where Camp LeJeune is sited. Onslow County has 25 banks and fourteen payday lenders, which gives it a ranking of eight out of 101.

Table 19. North Carolina: Top 31 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD	Lndrs	PD/100	KPop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
Seymour Wilson AFB	Wayne	113,398	30	17	15,00	56.67			7	6	5	1	6.92	8.36
	Sampson	60161	16	11	18.28	68.75			14	1	3	1	4.57	6.43
	Edgecombe	55606	10	10	17.98	100.00			16	2	1	3	4.23	5.77
MCAS Cherry Point	Craven	91,416	19	12	13.12	63.16			13	11	4	4	6.95	5.05
	Durham	223,314	67	27	12.09	40.30			4	13	12	5	16.98	10.02
	Cumberland	302,963	65	32	10.56	49.23			3	16	10	6	23.03	8.97
Fort Bragg Pope AFB	Vance	42,954	9	7	16.30	77.78			26	4	2	7	3.27	3.73
	Onslow	130,355	25	14	9.31	56.00			10	24	6	8	11.43	2.57
	Pasquotank	34,897	11	6	17.19	54.55			30	3	7	8	2.65	3.35
	Mecklenburg	695,454	219	71	10.21	32.42			1	20	24	10	52.88	18.12
	Catawba	141,685	51	16	11.29	31.37			8	15	25	11	10.77	5.23
	Rockingham	91,928	30	10	10.88	33.33			16	17	19	12	6.99	3.01
	Scotland	35,998	10	5	13.89	50.00			37	8	8	13	2.74	2.26
	Halifax	57,370	20	7	12.20	35.00			26	12	17	14	4.36	2.64
	Beaufort	44,958	17	6	13.35	35.29			30	10	16	15	3.42	2.58
	Pitt	133,798	40	13	9.72	32.50			11	22	23	15	10.17	2.83
	Lenoir	59,648	20	7	11.74	35.00			26	14	17	17	4.54	2.46
	Martin	25,593	10	4	15.63	40.00			40	5	13	18	1.95	2.05
	Alamance	130,800	42	13	9.94	30.95			11	21	27	19	9.94	3.06
	Columbus	54,749	16	6	10.96	37.50			30	16	14	20	4.16	1.84
	Forsyth	306,067	98	26	8.49	26.53			5	28	31	21	23.27	2.73
	Stanly	58,100	18	6	10.33	33.33			30	19	19	22	4.42	1.58
	Wake	627,846	211	52	8.28	24.64			2	31	37	23	47.74	4.26
	New Hanover	160,307	62	15	9.36	24.19			9	23	39	24	12.19	2.81
	Robeson	123,339	32	10	8.11	31.25			16	35	26	25	9.38	0.62
	Washington	137,23	6	2	14.57	33.33			55	7	19	26	1.04	0.96
	Randolph	130,454	45	11	8.43	24.44			14	29	38	26	9.92	1.08
	Granville	48,498	9	4	8.25	44.44			40	32	11	28	3.69	0.31
	Davidson	147,246	37	10	6.79	27.03			16	38	29	28	11.20	-1.20
	Nash	87,420	34	8	9.15	23.53			22	25	40	30	6.65	1.35
Fort Bragg Pope AFB	Harnett	91,026	27	7	7.69	25.93			26	36	32	31	6.92	0.06

The story was much the same once we examined the numbers at the ZIP code level. It was clear that within the military counties overcrowded with payday lenders, the ZIP codes adjacent to bases were the hottest spots for payday lending. For example, Goldsboro, home to about 65,000 civilians and 4500 service persons at Seymour Johnson Air Force Base, has nineteen banks and seventeen payday lenders citywide, but the ratio is most uneven on the side of town where the main base gates are located (ZIP 27534). Here, the ratio climbs to eleven payday lenders to only four banks, and with less than 30,000 people, it is the most thickly concentrated ZIP code in the state for payday lending.

Ranking fourth highest out of 735 possible ZIP codes in North Carolina is Jacksonville (28546). This ZIP code, adjacent to Camp LeJeune, has almost 33,000 people, eight banks, and ten payday lenders—7.5 more than the population would predict based on state averages. The Marine Corps Air Base at Cherry Point is situated just up the road in Havelock. The ZIP code here (28532) ranks tenth in the state, with its three banks and six payday lenders.

Fort Bragg and Pope Air Force Base share the same general space on the west side of Fayetteville. These bases have a number of local ZIP codes with unusually high numbers and densities of payday lenders. Fayetteville's 28303 ZIP code ranks highest among the local ZIP codes, (eight of 735) with seventeen banks and twelve payday lenders for roughly 32,000 people. The other nearby ZIP code of note is 28301, which has an additional nine payday lenders, helping to make it the fourteenth worst ZIP in the state for payday lending. Another ZIP (28311) bordering the base also has more payday lenders than one would expect and together the three Fayetteville ZIP codes near the bases have 26 payday lenders, 18.3 more than the population in those ZIP codes statistically warrants.

Table 20. North Carolina: Top 30 ZIP Codes Ranked by Payday Lending

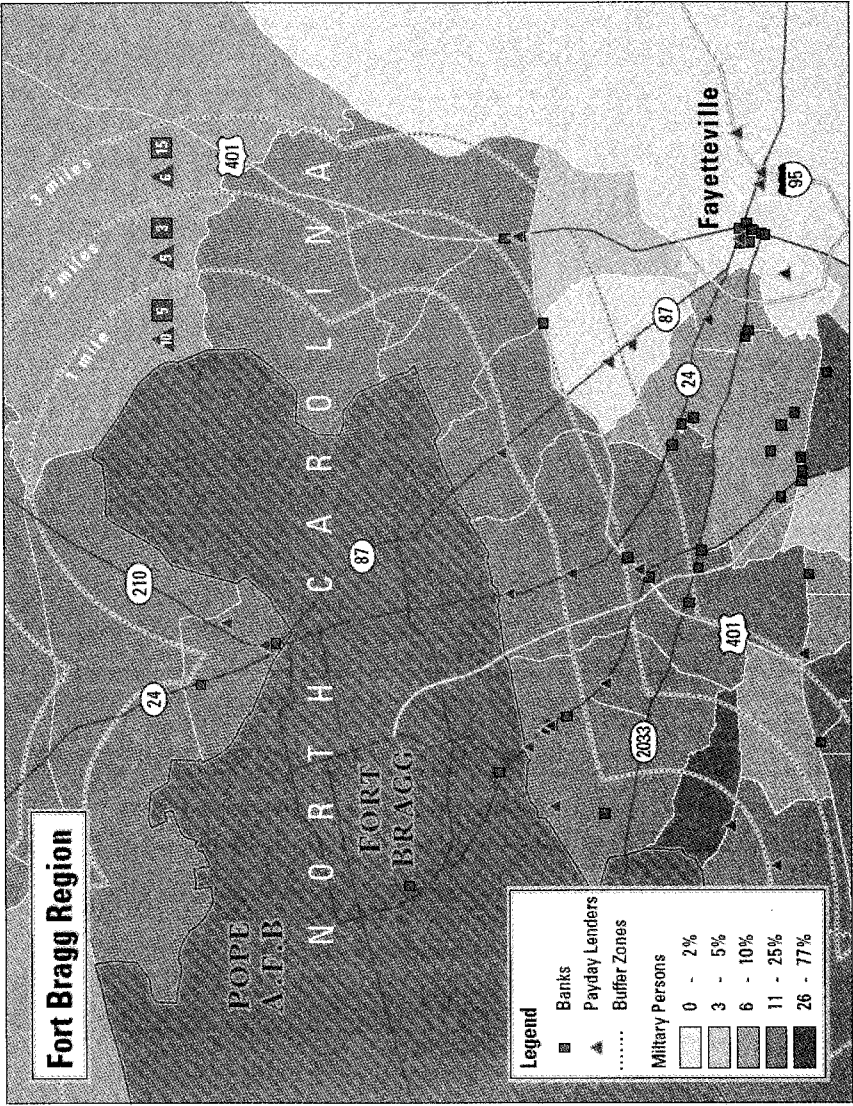
Nearby Base	ZIP	Town or City	Payday	Exp	Banks	PD/100K	R	PD	PC	Rnk	Composite Rank
Seymour Johnson AFB	27514	GOLDSBORO	11	2.91	4	35.75	3	7	9	9	1
	27610	RALEIGH	14	3.32	5	32.05	1	14	8	8	2
	28217	CHARLOTTE	10	1.47	7	51.58	6	2	16	3	3
Camp Lejeune	28548	JACKSONVILLE	10	2.78	3	30.51	5	15	19	4	4
	27604	RALEIGH	11	2.45	13	34.07	3	10	35	5	5
	28205	CHARLOTTE	11	3.52	7	23.75	3	33	13	6	6
Ft. Bragg/Pope AFB	28208	CHARLOTTE	9	2.72	8	25.16	10	28	20	7	7
	28303	FAYETTEVILLE	12	2.43	17	37.47	2	4	54	8	8
	27703	DURHAM	7	2.44	3	21.85	14	38	11	9	9
HQS Cherry Point	28532	HAVELOCK	6	2.09	3	21.98	25	37	12	10	10
	27886	TARBORO	5	1.23	5	30.97	34	15	21	11	11
	28602	HICKORY	8	2.08	11	29.21	12	19	45	12	12
Bragg/Pope - 5 mi	28358	LUMBERTON	10	2.79	14	27.22	6	22	52	13	13
	28301	FAYETTEVILLE	9	2.74	12	24.99	10	29	42	14	14
	27603	RALEIGH	6	2.51	2	18.16	20	52	10	15	15
	28212	CHARLOTTE	8	2.69	10	22.62	12	35	38	16	16
	27536	HENDERSON	6	1.40	9	32.61	20	13	53	17	17
	27870	ROANOKE	7	2.15	10	24.78	14	31	48	18	18
	27263	HIGH POINT	6	1.36	11	33.64	20	11	71	19	19
	28334	DUNN	6	1.76	10	25.99	20	25	58	20	20
	27704	DURHAM	7	2.05	12	26.00	14	24	65	20	20
	27601	RALEIGH	4	0.75	6	40.77	52	3	49	22	22
	27127	WINSTON SALEM	5	1.89	6	20.14	34	41	33	23	23
	28203	CHARLOTTE	3	0.77	3	29.68	73	18	21	24	24
	28215	CHARLOTTE	6	3.16	4	14.45	20	78	15	25	25
	28001	ALBEMARLE	6	2.08	10	21.97	20	36	58	26	26
Ft. Bragg/Pope AFB	27892	WILLIAMSTON	4	1.19	5	25.65	52	27	36	27	27
	27217	BURLINGTON	5	2.61	1	14.57	34	76	7	28	28
	28311	FAYETTEVILLE	5	2.51	3	15.12	34	11	14	29	29
Ft. Bragg/Pope AFB	28315	ABERDEEN	3	0.67	4	34.54	73	9	49	30	30
	28431	CHADBOURN	2	0.43	2	35.57	92	8	21	30	30

Because Fort Bragg and Pope Air Force Base together constitute one of the largest installations in the country, Fayetteville has become one of the nation's best known "military towns" and serves as an excellent site for additional analysis at the street level. When we mapped payday lenders in the region, we found roughly 36 total in Cumberland County, plus two others in a neighboring ZIP code in Harnett County, just to the north of Fort Bragg and Pope Air Force Base.⁴⁶² We were able to map the location of each payday lender, plus all 68 banks in this same region. After placing a series of one-mile buffers around the three ZIP codes that largely constitute the two bases, we counted the banks, payday lenders, and people living within each buffer zone.

As shown in Map 5, seven out of 36 payday lenders or about 20% of the payday lenders in the region were within one mile of the bases, while only five of the 68 banks (7.35%) were in that same one-mile buffer zone around the bases. Our mapping software counted eight banks either on-base or on the bases' immediate perimeter. There are no payday lenders on-base. Six additional payday lenders were between one and two miles from the bases, while only one bank was found in that zone. From two to three miles from the bases, the ratio of payday lenders to banks begins to edge back toward statewide averages with three payday lenders and six banks. Statewide there are roughly four banks to each payday lender, but in the three miles adjacent to Fort Bragg and Pope Air Force Base, the ratio is four banks to every five payday lenders.

Overall, about half of the payday lenders in the Fort Bragg region are within three miles of the base, while only about 17.5% of the banks are in that same three-mile zone. Even if we add in the on-base banks, only about 30% of the banks in the region are close to the Bragg/Pope area. There are about 90,000 people living within three miles of a base and, on average, 16% of this population is military. If this area conformed to state-wide averages, there should be less than seven payday lenders for this population, nine fewer than what we found in this three-mile zone around the Base. According to our statistical measures, those nine extra payday lenders next to the bases are enough to serve 120,000 additional North Carolinians. Outside the three mile buffer, there remains additional payday lending capacity, with at least six of the 21 remaining area payday lenders just beyond the three mile circumferential border used in our study.

⁴⁶² A listing of addresses for the Fayetteville region listed under "Check and Cash Advance" was downloaded from Yellow Pages and cross-checked against the database of check cashers. We found all but two of the entries matched, boosting our confidence in the accuracy of our proxy variable.



13. *Ohio*

In Ohio, unless otherwise authorized by law, charging interest in excess of 25% per annum is criminal usury, which is a fourth degree felony.⁴⁶³ However, the Ohio legislature has passed legislation protecting licensed payday lenders from the criminal law statute.⁴⁶⁴ Licensed Ohio payday lenders are authorized to charge interest of five percent per month⁴⁶⁵ in addition to an "origination fee" of ten percent,⁴⁶⁶ which is the effective equivalent of an annual rate of interest of 390%.⁴⁶⁷ Further, payday lenders may also charge defaulting borrowers returned check fees⁴⁶⁸ and check collection fees.⁴⁶⁹ The statute forbids allowing payday loans to extend beyond a term of six months, the longest duration of any state included in our survey.⁴⁷⁰ The statute also includes a prohibition of entering into a payday loan transaction for the purpose of "retiring" an existing loan, but only as between the original two parties.

While Ohio's large population and relatively lax payday lending regulation is reflected by the large number of payday lenders (1042),⁴⁷¹ the state does not have a great density of payday lenders (9.18 per 100,000 residents), nor does it have a sizeable number of military facilities. Wright-Patterson Air Force Base near Dayton, Ohio is the only significant active military installation in the state. This base is large and touches at least three other counties. The off-base population is widely scattered throughout the four-county region. Among those counties bordering Wright-Patterson, only Greene County ranks in the top ten in payday lending. Only Montgomery County ranks high in any of the statistical categories we examined, and only in terms of the total number of payday lenders (165), but given its population of over a half million people, this number is about what we expected statistically.

⁴⁶³ OHIO REV. CODE ANN. §§ 2905.21(H), 2905.22 (West 2004).

⁴⁶⁴ *Id.* §§ 1315.36–1315.38.

⁴⁶⁵ *Id.* § 1315.39(B). Specifically, the lender may charge five percent interest "per month or fraction of a month on the unpaid principal." *Id.* § 1315.39(B) (emphasis added).

⁴⁶⁶ *Id.* § 1315.40(A). The ten percent rate is allowed for loans under \$500; if a loan exceeds \$500, the interest rate is capped at 7.5 percent.

⁴⁶⁷ Assuming an average loan duration of fourteen days, a 15% fee (including the interest and the origination fee) equates to an annual interest rate of 390%.

⁴⁶⁸ OHIO REV. CODE ANN. § 1315.40(B) (West 2004). Returned check fees are the actual fees charged by the lender's bank for a returned check. *Id.*

⁴⁶⁹ *Id.* § 1315.40(B). Check collection fees are additional fees, not to exceed \$20, that a lender may charge a borrower for the inconvenience of depositing a worthless check. *Id.*

⁴⁷⁰ *Id.* § 1315.39(A)(2).

⁴⁷¹ OHIO DIVISION OF FINANCIAL INSTITUTIONS, OHIO CHECK LENDERS (Dec. 12, 2003) (on file with author) (provided by mail on authors' request).

Table 21. Ohio: Top 30 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 KPop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Compsit Rank	Exp PD	Obs -Exp
	Lawrence	62319	21	12	19.26	57.14	22	4	3	1	5.69	6.31
	Guernsey	40792	13	9	22.06	69.23	29	1	2	2	3.72	5.28
	Tuscarawas	90914	39	15	16.50	38.46	15	12	14	3	8.30	6.70
	Seneca	58683	20	10	17.04	50.00	27	11	6	4	5.36	4.64
	Allen	108473	39	15	13.83	38.46	15	15	14	4	9.90	5.10
	Fayette	28433	8	6	21.10	75.00	42	2	1	4	2.59	3.41
	Gallia	31069	11	6	19.31	54.55	42	3	5	7	2.84	3.16
	Washington	63251	35	12	18.97	34.29	22	5	24	8	5.77	6.23
Closed Newark AFB	Licking	145491	44	17	11.68	38.64	13	26	13	9	13.28	3.72
Wright Patterson AFB	Greene	147686	40	17	11.50	42.50	13	30	12	10	13.50	3.50
	Mahoning	257555	82	30	11.65	36.59	8	28	20	11	23.51	6.49
	Scioto	79195	21	10	12.63	47.62	27	22	8	12	7.23	2.77
	Clinton	40543	16	7	17.27	43.75	39	9	10	13	3.70	3.30
	Ross	73345	21	9	12.27	42.86	29	23	11	14	6.69	2.31
	Stark	378098	116	41	10.84	35.34	7	35	21	14	34.51	6.49
Wright Patterson AFB	Montgomery	50166	35	13	13.15	33.33	16	19	27	15	30.2	3.95
	Hocking	28241	9	5	17.70	55.56	53	8	4	17	2.58	2.42
	Jackson	32641	16	6	18.38	37.50	42	6	17	17	2.98	3.02
	Pike	27695	10	5	18.05	50.00	53	7	6	19	2.53	2.47
	Muskingum	84585	32	11	13.00	34.38	26	20	23	20	7.72	3.28
	Belmont	70226	41	12	17.09	29.27	22	10	37	20	6.41	5.59
	Fairfield	122759	34	13	10.59	38.24	18	37	16	22	11.20	1.80
	Champaign	38890	16	6	15.43	37.50	42	13	17	23	3.55	2.45
	Franklin	1068978	294	100	9.35	34.01	1	47	25	24	97.56	2.44
	Richland	128852	47	15	11.64	31.91	15	29	31	25	11.76	3.24
	Lucas	455054	127	43	9.45	33.86	6	45	26	26	41.53	1.47
	Trumbull	225116	74	23	10.22	31.08	9	38	32	27	20.55	2.45
	Crawford	46966	21	7	14.90	33.33	39	14	27	28	4.29	2.71
	Van Wert	29659	9	4	13.49	44.44	58	17	9	29	2.71	1.29
	Huron	59487	27	8	13.45	29.63	34	18	34	30	5.43	2.57

At the ZIP code level, the picture remains cloudy. For example, Fairborn (ZIP 45324), which is Wright-Patterson's "gateway town," ranks fifty-third among Ohio's 1016 ZIP codes because it has ten banks and seven payday lenders for its nearly 40,000 people including those on-base. Just across U.S. 35 lies Dayton's 45420 ZIP code. It ranks twenty-third in the state with seven banks and six lenders for its 25,000 people. Otherwise, the ZIP codes surrounding Wright-Patterson are statistically unremarkable.

Table 22. Ohio: Top 30 Zip Codes Ranked by Payday Lenders

Nearby Base	ZIP	Town or City	Payday Lenders	Exp. PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
Wright Patterson AFB-9 mi	43213	COLUMBUS	13	2.69	11	44.08	1	9	21	1
	44310	AKRON	9	2.19	6	37.48	5	14	15	2
	43912	BRIDGEPORT	7	0.70	5	91.83	20	2	17	3
	44906	MANSFIELD	8	1.59	8	45.88	11	7	22	4
	44320	AKRON	8	2.16	3	33.84	11	22	9	5
	44137	MAPLE HEIGHTS	9	2.38	7	34.52	5	21	18	6
	43616	OREGON	7	1.51	8	42.28	20	11	44	7
	44708	CANTON	7	2.35	7	27.17	20	41	22	8
	43952	STEUBENVILLE	8	1.87	11	39.00	11	13	70	9
	43725	CAMBRIDGE	7	1.93	9	33.03	20	24	61	10
	44683	UHRICHSVILLE	4	0.80	3	45.79	83	8	19	11
	43229	COLUMBUS	12	4.18	15	26.21	2	46	64	12
	44709	CANTON	6	1.76	7	31.03	38	29	46	13
	44515	YOUNGSTOWN	8	2.54	11	28.70	11	33	70	14
	43612	TOLEDO	7	2.89	7	22.13	20	73	22	15
	44306	AKRON	6	2.31	4	23.65	38	64	16	16
	43160	WASHINGTON COURT HOUSE	6	2.01	7	27.19	38	39	46	17
Wright Patterson AFB-9 mi	45255	CINCINNATI	6	2.09	7	26.21	38	45	46	18
	45449	DAYTON	6	1.81	8	30.19	38	30	85	19
	45662	PORTSMOUTH	8	2.84	11	25.70	11	52	70	19
	44483	WARREN	7	2.65	9	24.15	20	59	61	21
	45690	WAVERLY	5	1.30	7	34.98	55	20	68	22
Wright Patterson AFB-7 mi	45420	DAYTON	6	2.31	7	30.71	38	63	46	23
	44505	YOUNGSTOWN	7	2.04	12	31.29	20	26	101	23
	44123	EUCLID	5	1.69	6	27.03	55	43	51	25
	45669	PROCTORVILLE	4	0.94	5	39.01	83	12	55	26
	45210	CINCINNATI	3	0.88	1	31.21	114	27	10	27
	44112	CLEVELAND	6	3.05	2	17.95	38	106	8	28
	43078	URBANA	6	1.91	10	28.68	38	34	86	29
Wright Patterson AFB-7 mi	45504	SPRINGFIELD	5	1.79	6	25.47	55	53	51	30
	43113	CIRCLEVILLE	6	2.16	8	25.30	38	56	65	30

The street-level analysis done for Wright-Patterson did, however, show some greater clustering around the base than the other resolutions did not. In the three-mile buffer zone around the base, we found 21 of the 75 payday lenders in the tri-county region. This is 28% of the region's payday lenders, but only ten percent (25 of 242) of the region's banks are found in the same three-mile buffer zone. In the first two miles from base, the ratio of payday lenders to banks is twelve to eight. We have documented similarly uneven ratios in other states, but in Ohio such an imbalance is actually quite rare. Of the 1016 ZIP code regions in Ohio, only 38 have more payday lenders than banks, and of those, only one in Akron has a greater imbalance between payday lending and banks than the two-mile radius around Wright-Patterson. By taking the number of people in the three-mile buffer, plus those living on-base, we can estimate that there should be about 14.5 payday lenders there, which is roughly seven *fewer* than what we actually found in the three miles surrounding Wright-Patterson. Because the banks, payday lenders, and population are split into numerous ZIP codes, the pattern we normally see at the ZIP code level is diluted. If, however, the near-base neighborhoods were collapsed into a single ZIP code, surely it would be one of the worst in Ohio.

14. *Oklahoma*

In Oklahoma, payday lenders are licensed and regulated under the state's Deferred Deposit Loan Act (DDLA).⁴⁷² The Oklahoma DDLA authorizes payday lenders to charge a fee of \$15 for every \$100 loaned up to the first \$300.⁴⁷³ Assuming a fourteen-day loan of an amount within this range, the statute allows an effective annual interest rate of 390%. The DDLA further allows lenders to charge an additional returned check fee of \$25.⁴⁷⁴ Initial loan terms are limited to between twelve and 45 days.⁴⁷⁵ The DDLA prohibits any renewal or rollover of a payday loan.⁴⁷⁶ But, the Act also allows lenders to make two payday loans to a given borrower at one time, suggesting that the prohibition

⁴⁷² OKLA. STAT. tit. 59, §§ 3101–19 (Supp. 2005).

⁴⁷³ *Id.* § 3108. For payday loans of more than \$300, the lender can charge an additional \$10 for every \$100 advance in excess of \$300. *Id.*

⁴⁷⁴ *Id.* § 3108(B).

⁴⁷⁵ *Id.* § 3106(8). However, a loan term may exceed 45 days if the debtor has entered into an installment payment plan.

⁴⁷⁶ *Id.* § 3109(A). A renewal is defined as a transaction in which the borrower refinances all or part of the unpaid balance of a payday loan with the proceeds of a new payday loan, regardless of whether the new payday loan is extended by the same or a different lender. *Id.* § 3102(16). A renewal is further defined as a payday loan made within thirteen days after a previous payday loan has been entered into between the lender and the borrower. OKLA. STAT. tit. 59, § 3109(C).

on rollovers may be unenforceable.⁴⁷⁷ To verify that a borrower has no more than two outstanding loans, every payday lender must require the borrower to sign an affidavit, and then the lender must “verify the accuracy of the affidavit” by searching through the lender’s own records and by searching through an on-line database managed by a government contractor.⁴⁷⁸ The DDLA also regulates “consecutive” payday loans, which are defined as loans extended to a borrower no later than seven days after the date on which a previous loan was fully paid off by that borrower.⁴⁷⁹ The Act allows a borrower to pay the fourth loan in a series of consecutive payday loans through means of an installment payment plan for which the lender can charge no more than \$15.⁴⁸⁰ If a borrower has entered into five consecutive payday loans, the DDLA mandates that the borrower wait until at least 8:00 a.m. on the second business day after the fifth loan has been fully repaid before entering into his or her next payday loan transaction.⁴⁸¹ Finally, the Act also establishes the regulatory revolving fund, which is intended to be used to pay claims filed by aggrieved Oklahoma consumers.⁴⁸²

Under this regulation, Oklahoma has developed about 407 payday lenders⁴⁸³ and about 1241 banks. This is about 11.8 payday lenders per 100,000 people, which is somewhere in the middle of the survey. The pattern of payday lending statewide is disproportionately focused in the state’s two metropolitan counties. Together, Tulsa County and Oklahoma County have about one-third of the population but about one-half of the payday lenders. Oklahoma County is home

⁴⁷⁷ Oklahoma consumer advocates complain that Oklahoma’s DDLA has not prevented chronic borrowing:

Since the Oklahoma Deferred Deposit Lending Act became effective September 1, 2003, the average Oklahoma payday loan customer is borrowing at a pace of a little over one payday loan per month, which equals 13 loans a year. During the four month period August–November, 2004, most payday borrowers (77%) had taken out consecutive loans, and 36.4% had taken out 3 or more consecutive loans.

COMMUNITY ACTION PROJECT, PAYDAY LENDING: SB 892 WILL HELP PROTECT CONSUMERS, http://www.captc.org/pubpol/Payday_Lending/SB892_IssueBrief.pdf (last visited Oct. 17, 2005).

⁴⁷⁸ OKLA. STAT. tit. 59, § 3109(B)(2) (Supp. 2005); Steve Kanigher, *Florida, Oklahoma Databases Reduce Loans Per Customer*, LAS VEGAS SUN, Mar. 6, 2005, at D4. The database is funded by a \$0.46 assessment charged to lenders for every payday loan transaction. *Id.*

⁴⁷⁹ OKLA. STAT. tit. 59, § 3102(4) (Supp. 2005).

⁴⁸⁰ *Id.* §§ 3104(E), 3109(D).

⁴⁸¹ *Id.* § 3110.

⁴⁸² *Id.* §§ 3118–19. The fund is funded by payday lender license fees, examination fees, and application fees, as well as a \$0.05 charge assessed to payday lenders for every loan transaction entered into. *Id.* §§ 3118–19 (Supp. 2005).

⁴⁸³ STATE OF OKLAHOMA, DEPARTMENT OF CONSUMER CREDIT, DEFERRED DEPOSIT LENDER ROSTER, <http://www.okdocc.state.ok.us/ROSTERS/rosterDDL.pdf> (last visited Oct. 17, 2005).

to Tinker Air Force Base. Garfield County, home of Vance Air Force Base, ranks tenth in the state on our composite scale, and Comanche County, where Fort Sill is located, ranks twenty-third of 77 counties. Muskogee County, which does not have a military base, ranks first in our composite scale, and no obvious causal variables can be found for this anomalous statistical condition.

Table 23. Oklahoma: Top 30 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
Tinker AFB	Muskogee	69451	24	13	18.72	54.17	4	3	4	1	8.19	4.81
	OK	680448	225	107	15.70	47.35	3	5	7	2	77.90	29.10
	Bryan	36534	11	7	19.16	63.64	11	2	1	2	4.31	2.69
	Tulsa	563299	183	90	15.98	49.18	2	7	6	4	66.44	23.56
	Rogers	70641	16	10	14.16	62.50	5	13	2	5	8.33	1.67
	Cherokee	42521	14	7	16.46	50.00	11	5	5	6	5.02	1.98
	Okmulgee	39685	11	6	15.12	54.55	14	11	3	7	4.68	1.32
	Kay	48080	25	8	16.64	32.00	7	4	23	8	5.67	2.33
	Payne	68190	20	8	11.73	40.00	7	24	8	9	8.04	-0.04
	Garfield	57013	24	8	13.64	33.33	7	16	18	10	6.92	1.18
Vance AFB	Delaware	37077	13	5	13.49	38.46	19	17	10	11	4.37	0.63
	Washington	48996	16	6	12.25	37.50	14	21	12	12	5.78	0.22
	Mayes	38369	13	5	13.03	38.46	19	20	10	13	4.53	0.47
	Portotoc	35143	15	5	14.23	33.33	19	12	18	13	4.15	0.85
	Marshall	13184	5	2	15.17	40.00	32	10	8	15	1.56	0.44
	Pottawatomie	65521	19	7	10.68	36.84	11	27	13	16	7.73	-0.73
	Cleveland	208016	50	17	9.17	34.00	3	34	17	17	24.54	7.54
	Cimarron	3148	3	1	31.77	33.33	39	1	18	18	0.37	0.63
	Logan	33924	11	4	11.79	36.36	22	23	14	19	4.00	0.00
	Stephens	43182	22	6	13.89	27.27	14	15	30	19	5.09	0.91
Altus AFB	Jackson	28439	13	4	14.07	30.77	22	14	24	21	3.35	0.65
	Canadian	87697	28	8	9.12	28.57	7	30	25	22	10.34	-2.34
	Comanche	114986	35	10	6.70	28.57	5	53	25	23	13.56	-3.56
	Carter	45621	23	6	13.15	26.09	14	19	31	24	5.38	0.62
	Murray	12623	7	2	15.84	28.57	32	8	25	25	1.49	0.51
	Custer	26142	18	4	15.30	22.22	22	9	34	25	3.08	0.92
	Osage	44437	11	4	9.00	36.36	22	31	14	27	5.24	-1.24
	Sequoyah	38972	12	4	10.26	33.33	22	32	18	28	4.60	-0.60
	Creek	67367	21	6	8.91	28.57	14	32	25	29	7.95	-1.95
	Wagoner	57491	11	4	6.96	36.36	22	39	14	30	6.78	-2.78

Examining the data at the ZIP code level produces a clearer picture of the pattern of payday lending around military bases. The ZIP code next to Tinker Air Force Base (73110) has nine payday lenders, which ties it for third most in the state and gives it almost five more payday lenders than one could expect given the local population. Overall, ZIP code 73110 ranks ninth worst out of 591. Ranking tenth worst on our composite ranking is another ZIP code near Tinker Air Force Base (73115), which has six additional payday lenders. The other military installations in Oklahoma have lower numbers and densities of payday lenders than we have documented elsewhere. Fort Sill's adjacent ZIP code has seven payday lenders, which is two more than one would expect given the population, but if one were to include the numbers from Fort Sill proper, the combined number would be about on target. Phone interviews conducted with financial advisors at Fort Sill suggested very strongly that the state of Oklahoma's registry of payday lenders is incomplete and that many of the nearby payday lenders are operating without licenses. A survey of the phone book listings in Fort Sill's gateway town of Lawton revealed fourteen payday lenders, of which only five were on the state's list of licensees for Lawton. Moreover, five payday lenders that were on the state's list of payday lenders could not be found in the phone book. By combining the lists and taking care not to double count those on both lists, the total number of payday lenders in Lawton stands at nineteen. A representative with the Consumer Credit Counseling Service in Oklahoma estimated that 20 or more payday lenders operated in Lawton as of January 2005.⁴⁸⁴

⁴⁸⁴ Telephone Interview with Jennifer Delacamp, Lawton Area Supervisor, Consumer Credit Counseling of Oklahoma, in Oklahoma City, Okla. (Jan. 19, 2005).

Table 24. Oklahoma: Top 30 Zip Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday	Exp PD	Banks	PD/100K	R PD	R PC	LQ Rank	Composite Rank
Tinker-6 miles	74145	TULSA	11	2.10	1	61.70	1	1	2	1
	74129	TULSA	8	2.09	0	45.25	7	3	1	2
	73119	OKLAHOMA CITY	10	3.22	5	36.62	2	7	9	3
	73107	OKLAHOMA CITY	9	2.83	9	36.17	3	10	22	4
	74115	TULSA	7	2.79	2	29.62	10	17	8	4
	74105	TULSA	9	3.44	7	30.83	3	15	17	4
	74701	DURANT	7	2.27	7	36.40	10	9	22	7
	74403	MUSKOGEE	8	3.56	6	26.47	7	26	16	8
	73110	OKLAHOMA CITY	9	4.07	8	26.13	3	27	21	9
	73115	OKLAHOMA CITY	6	2.59	4	27.30	17	22	14	10
Tinker AFB-5 mi	73139	OKLAHOMA CITY	7	1.92	9	43.02	10	5	39	11
	74075	STILLWATER	5	2.12	3	27.83	23	21	12	12
	74804	SHAWNEE	5	2.27	3	25.98	23	28	12	13
	74464	TAHLEQUAH	7	2.52	10	32.73	10	13	46	14
	74361	PRYOR	4	1.51	4	31.24	34	14	22	15
	74006	BARTLESVILLE	6	2.83	6	25.01	17	31	22	15
	73106	OKLAHOMA CITY	4	1.85	2	25.50	34	29	10	17
	73132	OKLAHOMA CITY	9	2.94	15	36.14	3	11	62	18
	74112	TULSA	5	2.69	4	21.96	23	43	19	19
	74601	PONCA CITY	6	2.41	10	29.38	17	18	53	20
Tinker AFB-6 mi	73127	OKLAHOMA CITY	5	3.02	4	19.54	23	55	19	21
	73122	OKLAHOMA CITY	3	1.59	2	22.29	47	40	15	22
	74146	TULSA	5	1.69	10	34.83	23	12	68	23
	74344	GROVE	4	1.55	7	30.49	34	16	54	24
	74107	TULSA	4	2.36	3	19.98	34	52	18	24
	73116	OKLAHOMA CITY	4	1.11	9	42.31	34	6	70	26
	73160	OKLAHOMA CITY	7	4.81	3	17.15	10	65	37	27
	73128	OKLAHOMA CITY	1	0.26	1	44.84	90	4	22	28
	74116	TULSA	1	0.43	0	27.27	90	23	3	28
	74033	GLENPOOL	2	0.98	2	24.03	63	33	22	30
Tinker AFB	73503	LAWTON	7	5.41	11	15.25	10	12	52	39
	73149	OKLAHOMA CITY	1	0.69	0	17.20	90	64	3	52

15. South Carolina

Payday lenders in South Carolina operate under the authority of the South Carolina Deferred Presentment Services Act (SCDPSA).⁴⁸⁵ Under the Act, licensed payday lenders may assess a maximum fee of 15% of the face amount of the check,⁴⁸⁶ which equates to an annual percentage interest rate of 459%.⁴⁸⁷ Lenders may issue a loan with a maximum duration of 31 days.⁴⁸⁸ The loan may not be issued for the purpose of paying off another payday loan from the same lender,⁴⁸⁹ nor may a lender renew a payday loan.⁴⁹⁰

With over 900 payday lenders⁴⁹¹ but just over four million people, South Carolina has one of the heaviest densities of payday lenders in the country at over 22 per 100,000 people. South Carolina is home to Advance America Cash Advance Centers, Inc., one of the largest payday lenders in the country.⁴⁹² Advance America operates nearly 2300 storefronts in 34 states and makes more than 1.5 million loans per year.⁴⁹³ In December of 2004, the company raised \$322.5 million in an initial public offering on the New York Stock Exchange.⁴⁹⁴ South Carolina is also home to three significant military bases: the Fort Jackson Army Base, Shaw Air Force Base, and the Beaufort/Parris Island Marine Corps complex.

Our data, mapped at the county level, revealed that counties with a significant military presence had comparatively high numbers and densities of payday lenders. Richland County, home to the Army's Fort Jackson had the most payday lenders among all counties statewide. Third on this list was Charleston County, where Charleston Air Force Base is located.

Though not high on the list of total payday lenders, Sumter County, home to Shaw Air Force Base, still had 13.5 more payday lenders than its population

⁴⁸⁵ S.C. CODE ANN. §§ 34-39-110 to 34-39-260 (Supp. 2004).

⁴⁸⁶ *Id.* § 34-39-180(E).

⁴⁸⁷ The SCDPSA allows a fee of 15%, which equates to a fee of \$17.65 for every \$100 loaned. Assuming an average loan duration of fourteen days, the Act authorizes an effective APR of 459%.

⁴⁸⁸ S.C. CODE ANN. § 34-39-180(A) (Supp. 2004).

⁴⁸⁹ *Id.* § 34-39-180(F).

⁴⁹⁰ *Id.*

⁴⁹¹ STATE OF SOUTH CAROLINA, STATE BOARD OF FINANCIAL INSTITUTIONS, DEFERRED PRESENTMENT SERVICES LICENSEES (Dec. 12, 2003) (on file with authors) (mailed to authors by request).

⁴⁹² Ieva M. Augstums, *Dallas-Area Companies Expand as Payday Lending Goes Mainstream*, DALLAS MORNING NEWS, Jan. 4, 2005.

⁴⁹³ *Id.*

⁴⁹⁴ *Id.*

would suggest, making it the third worst on a per capita basis. Sumter also ranks first in the ratio of payday lenders to banks in the state (37 to 15), giving it the worst overall ranking in the state for payday lending. Although Aiken County does not contain a military base, it had seven payday lenders beyond what one would expect, enough to serve an additional 31,000 plus people. It also has five more payday lenders than banks in the county, giving it overall the third worst record in the state. After zooming out from the map, a strong rationale for the odd number of payday lenders in Aiken County becomes evident: it is just a few miles away from the 10,000 troops stationed across the Georgia border at the Fort Gordon Army Base.

Table 25. South Carolina: Top 25 Counties Ranked by Payday Lending, Plus Selected Military Counties

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
Shaw AFB	Sumter	104546	18	37	35.26	205.56	10	2	1	1	23.50	13.50
	Florence	125761	53	47	37.37	88.68	5	1	14	2	28.24	18.76
	Aliken	142552	34	39	27.36	114.71	8	11	8	3	32.01	6.99
Port Clinton, OH (AS Paris Is) b.m.	Kershaw	52647	13	16	30.39	123.08	15	7	6	4	11.82	4.18
	Colleton	38264	11	13	33.97	118.18	19	3	7	5	8.59	4.41
Fort Jackson	Greenwood	66271	25	22	33.20	88.00	14	4	15	6	14.88	7.12
	Clarendon	32502	6	10	30.77	166.67	26	6	2	7	7.30	2.70
	Orangeburg	91582	25	24	26.21	96.00	13	13	12	8	20.57	3.43
	Greenville	379616	154	104	27.40	67.53	1	10	29	9	85.25	18.75
	Richland	349577	97	72	22.45	74.23	2	21	20	10	72.92	0.92
Charleston AFB NWS	Cherokee	52537	13	13	24.74	100.00	19	15	9	10	11.80	1.20
	Chester	34068	7	9	26.42	128.57	28	12	4	12	7.65	1.35
	Williamsburg	37217	12	11	29.56	91.67	23	8	13	12	8.36	2.64
	Anderson	165740	60	42	25.34	70.00	6	14	26	14	37.22	4.78
	Spartanburg	253791	77	56	22.07	72.73	4	22	21	15	57.00	-1.00
	Berkley	142651	21	27	18.93	128.67	12	32	4	16	32.06	-3.04
	Lancaster	61351	9	13	21.19	144.44	19	26	3	16	13.78	-0.78
Charleston AFB NWS	Saluda	19181	6	6	31.28	100.00	34	5	9	16	4.31	1.69
	Newberry	36108	13	10	27.69	76.92	26	9	19	19	8.11	1.89
	Darlington	67394	22	16	23.74	72.73	15	18	21	19	15.14	0.86
	Charleston	309269	112	68	21.94	60.71	3	23	34	21	69.81	-1.61
	Laurens	69567	16	14	20.12	87.50	18	29	16	22	15.62	-1.62
Charleston AFB NWS	Marlboro	28818	9	7	24.29	77.78	32	16	17	23	6.47	0.53
	Union	29881	9	7	23.43	77.78	32	19	17	24	6.71	0.29
	York	164614	44	31	18.83	70.45	11	33	25	25	36.97	-5.97
	Durham	96413	27	11	11.41	40.74	23	41	40	39	21.96	10.03
	Beaufort	120987	61	6	6.62	13.11	30	42	44	42	27.16	-9.16
MC Beaufort (AS Paris Is)	Jasper	20573	5	6	0.00	0.00	45	45	45	45	4.64	-4.64
	Beaufort	120987	61	6	6.62	13.11	30	42	44	42	27.16	-9.16

The analysis of payday lending at the ZIP code level produced a pattern mimicking what we found at the county level. The ZIP code ranked first in the state for payday lending is Sumter (29150), which has 30 payday lenders and sixteen banks for just over 38,000 people. Statistically, one would expect to find about ten payday lenders in a ZIP code this size, even including the 5000 plus Air Force personnel stationed at Shaw Air Force base in the adjacent ZIP code.

ZIP codes within five miles of Fort Jackson's borders also stand out. West Columbia (29169) ranks third worst in the state, Columbia (29210) ranks sixth and Columbia (29223) also scores poorly with excess capacity. Together these three ZIP codes have 48 payday lenders and only 28 banks. Adjacent to Charleston Air Force Base is North Charleston (21624), which has fifteen payday lenders, and only seven banks. This is 10.14 payday lenders above the number expected and makes this ZIP code the fifth worst in the state. The second worst ZIP code in South Carolina is North Augusta (29841), the ZIP code closest to Fort Gordon in Augusta, Georgia. Home to less than 30,000 people, North Augusta has eighteen payday lenders, more than eleven beyond statistical expectations for the population.

The Beaufort/Parris Island area deserves some notice as well. Beaufort ZIP code 29906, with four payday lenders and no banks, ranks highest in the state in terms of payday lenders per bank, and seven of the eight payday lenders in the county are within three miles of the Marine Corps Air Station. Still, our statistical analysis does not reveal the concentration of payday lending found near Marine bases elsewhere in our study. The local context provides some additional explanation that bears mentioning. Beaufort County has an unusually large number of banking facilities, more than double what is statistically expected for the population there. Much of that is due to the large excess of banks in the luxury resort town of Hilton Head. The density of banking reduces the overall ranking calculated for Beaufort County. The other likely factor in the moderate number of payday lenders in the area is the complete absence of this activity near the Marine Corps' training facility at Parris Island. This is surely due to the Marines' exceptional restrictions upon their boot-camp trainees, including a prohibition against having private automobiles while at Parris Island.

Table 26. South Carolina: Top 30 ZIP codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday Lenders	Exp. PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
Shaw AFB	29310	NUMER	30	8.66	16	73.41	1	3	17	1
	29841	NORTH AUGUSTA	18	6.69	7	60.41	4	9	14	2
	29169	WEST COLUMBIA	18	4.78	9	84.95	4	2	24	3
Charleston AFB	29649	GREENWOOD	14	5.28	3	59.63	11	12	11	4
	29210	N. CHARLESTON	15	4.66	7	39.37	9	8	23	5
	29210	COLUMBIA	17	7.85	8	48.68	6	22	20	6
Charleston AFB	29020	CAMDEN	13	4.85	7	60.25	13	10	30	7
	29609	GREENVILLE	15	6.55	8	51.45	9	19	29	8
	29505	FLORENCE	11	4.20	5	58.78	21	13	25	9
	29115	ORANGEBURG	17	6.63	12	57.61	6	14	39	9
	29102	MANNING	9	3.54	3	57.06	38	15	15	11
	29303	SPARTANBURG	12	5.66	6	47.63	16	25	27	11
	29611	GREENVILLE	12	6.31	5	42.73	16	34	18	11
	29306	SPARTANBURG	11	3.59	9	68.90	21	5	53	14
	29625	ANDERSON	10	5.28	4	42.52	25	35	19	14
	29301	SPARTANBURG	14	6.55	11	48.03	11	23	45	14
	29678	SENECA	10	4.30	8	52.28	25	18	49	18
Charleston AFB	29560	LAKE CITY	8	3.01	5	59.69	45	11	38	19
	29407	CHARLESTON	17	8.20	17	46.58	6	27	63	20
	29706	CHESTER	9	4.72	4	42.86	38	33	26	21
Ft. Jackson	29606	COLUMBIA	10	4.72	8	47.98	25	42	49	22
	29607	GREENVILLE	21	6.96	24	67.80	2	6	92	23
	29720	LANCASTER	13	9.90	5	29.51	13	74	16	24
	29108	NEWBERRY	10	4.41	9	50.99	25	20	60	25
WVCS Charleston	29624	ANDERSON	6	3.55	1	37.99	54	42	12	26
	29617	MONCKSTERN	10	6.30	3	37.37	25	35	49	27
	29488	WALTERBORO	11	5.35	10	46.20	21	28	61	27
	29662	MAULDIN	7	2.33	7	67.46	47	7	63	29
MCAS Beaufort	29605	GREENVILLE	12	7.03	12	38.33	16	40	63	30
	29604	BEAUFORT	4	4.88	1	18.43	88	105	1	52

16. South Dakota

South Dakota law imposes few restrictions on payday lenders operating within its borders. Lenders must be licensed with the state⁴⁹⁵ and they may not enter into payday loan transactions with borrowers who already have an outstanding payday loan.⁴⁹⁶ Further, a payday loan may not be renewed more than four times.⁴⁹⁷ However, beyond these minimal requirements, South Dakota imposes no limits on the duration of payday loans⁴⁹⁸ and no maximum interest rate so long as the parties establish the interest rate in a written agreement.⁴⁹⁹ Similar in many respects to Delaware, South Dakota is a state with a small population (755,000), a single Air Force base (Ellsworth), and a laissez faire lending and taxation tradition. Despite its sparse population, South Dakota has 448 banks and 175 payday lenders.⁵⁰⁰ South Dakota has the highest number of banks per capita in the survey and the second highest density of payday lenders per capita (23.18 per 100,000) among the states in our survey. It is possible that the banking density can be seen partly as a manifestation of the number of banks that operate in South Dakota for taxation purposes only. It is also partly a result of so many very small communities with multiple, very small banking operations. The density of payday lending statewide may also be partly a result of these conditions. At least seven South Dakota banks are currently renting their charters to lenders in states with more restrictive payday lending laws.⁵⁰¹

⁴⁹⁵ S.D. CODIFIED LAWS § 54-4-40 (Supp. 2003).

⁴⁹⁶ *Id.* § 54-4-65.

⁴⁹⁷ *Id.*

⁴⁹⁸ Payday loans are referred to as "small, short-maturity loan[s] on the security of a check." *Id.* § 54-4-36(12).

⁴⁹⁹ *Id.* § 54-3-1.1.

⁵⁰⁰ STATE OF SOUTH DAKOTA, DEPARTMENT OF REVENUE AND REGULATION, DIVISION OF BANKING, LIST OF LICENSEES, <http://www.state.sd.us/drr2/reg/bank/licensee.htm> (last visited Oct. 17, 2005).

⁵⁰¹ Joe Mahon, *Banking on the Fringe: Payday and Title Loans Continue to be Popular, and States Continue to Seek Tougher Regulation for an Industry Adept at Finding Ways to Grow*, FEDGAZETTE, July 2004, <http://minneapolisfed.org/pubs/fedgaz/04-07/banking.cfm>. Some state officials around the country are challenging South Dakota-based lenders for violating their own state usury laws. For example, Arkansas Attorney General Mike Beebe is investigating two lenders based in South Dakota, Mount Rushmore Loan Co. and Dakota Loan Co., for entering into payday loan transactions carrying interest rates far in excess of the Arkansas constitutional usury limit. *Arkansas AG Investigating Payday Lenders, Including 2 From S.D.*, PRESS & DAKOTAN (Yankton, S.D.), Jan. 21, 2005. Similarly, the Georgia Attorney General's office is pursuing legal action against South Dakota-based Bank West for violations of Georgia's payday lending law. Mahon, *supra* note 501.

Pennington County, which contains the majority of Ellsworth Air Force Base, ranks first in the state for payday lending. It has almost 90,000 residents, 28 banks, and 40 payday lenders. This is about 21 more payday lenders than the population of 90,000 people would suggest, even in South Dakota where densities are high. Pennington County, with 12% of the population, has 23% of the state's payday lenders. It may be tempting to speculate that Pennington County's American Indian population is another possible causal variable; however, because this county is only about seven percent Native American, one of the lower rates in South Dakota, such speculation proves unfounded.

Table 27. South Dakota: Top 20 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lntrs	PD/100 KPop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
	Brown	35460	19	14	39.48	73.68	3	4	4	2	8.27	5.73
	Minnehaha	148281	92	55	37.09	59.78	1	5	7	3	34.57	20.43
	Walworth	5974	4	3	50.22	75.00	12	1	2	4	1.39	1.61
	Beadle	17023	8	6	35.25	75.00	7	7	2	5	3.97	2.03
	Yankton	21652	11	8	36.95	72.73	5	6	5	5	5.05	2.95
	Union	12584	10	5	39.73	50.00	9	3	8	7	2.93	2.07
	Lawrence	21802	10	7	32.11	70.00	6	9	6	8	5.08	1.92
	Codington	25897	19	9	34.75	47.37	4	8	10	9	6.04	2.96
	Davison	18741	13	6	32.02	46.15	7	10	11	10	4.37	1.63
	Hughes	16481	11	5	30.34	45.45	9	12	12	11	3.84	1.16
	Tripp	6430	5	2	31.10	40.00	13	11	13	12	1.50	0.50
	Brookings	28220	13	5	17.72	38.46	9	15	14	13	6.58	-1.58
	Moody	6595	2	1	15.16	50.00	16	16	8	14	1.54	-0.54
	Fall River	7453	6	2	26.83	33.33	13	13	15	15	1.74	0.26
	Brule	5364	4	1	18.64	25.00	16	14	17	16	1.25	-0.25
	Grant	7847	5	1	12.74	20.00	16	17	18	18	1.83	-0.83
	Charles Mx	9350	6	1	10.70	16.67	16	18	19	19	2.18	-1.18
	Clay	13537	6	1	7.39	16.67	16	21	19	20	3.16	-2.16
	Lake	11276	8	1	8.87	12.50	16	19	21	20	2.63	-1.63

At the ZIP code level, Rapid City ZIP code 57701, which borders Ellsworth Air Force Base on the west, ranks first in the state for payday lending. This ZIP code, with roughly 40,000 people and nineteen banks, has 28 payday lenders—nineteen more than its population would suggest based on statewide averages.

Table 28. South Dakota: Top 30 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday Lenders	Exp. PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
	57105	SIoux FALLS	22	5.64	13.0	90.93	2	5.00	2	2
	57401	ABERDEEN	14	6.75	12.0	48.38	4	6.00	7	3
	57201	WATERTOWN	9	5.47	16.0	38.38	5	3.00	19	4
	57106	SIoux FALLS	9	6.42	16.0	32.70	5	3.00	19	4
	57350	HURON	6	3.26	6.0	42.90	9	12.00	8	6
Elisabeth ABP 8 mi	57752	RAPID CITY	7	6.80	3.0	23.73	7	22.00	1	7
	57078	YANKTON	7	4.21	9.0	38.76	7	9.00	14	7
	57783	SPEARFISH	6	2.84	4.0	49.26	9	17.00	5	9
	57049	NRTH SIoux CITY	5	1.02	5.0	113.84	12	13.00	8	10
	57110	SIoux FALLS	5	2.01	5.0	57.97	12	13.00	8	10
	57104	SIoux FALLS	15	6.07	29.0	57.64	3	1.00	29	10
	57301	MITCHELL	6	4.08	12.0	34.30	9	6.00	22	13
	57006	BROOKINGS	5	4.36	9.0	26.76	12	9.00	17	14
	57501	PIERRE	5	3.70	10.0	31.50	12	8.00	21	15
	57601	MOBRIDGE	3	0.93	3.0	75.15	17	22.00	8	16
	57103	SIoux FALLS	4	7.66	9.0	12.18	16	9.00	23	17
	57580	WINNER	2	1.12	4.0	41.75	19	17.00	18	18
	57747	HOT SPRINGS	2	1.31	5.0	35.61	19	13.00	24	19
	57785	STURGIS	2	2.06	3.0	22.63	19	22.00	15	19
	57069	VERMILLION	1	2.65	5.0	8.81	23	13.00	31	22
	57732	DEADWOOD	1	0.61	3.0	37.99	23	22.00	25	23
	57325	CHAMBERLAIN	1	0.73	3.0	31.83	23	22.00	25	23
	57252	MILBANK	1	1.18	3.0	19.80	23	22.00	25	23
	57108	SIoux FALLS	1	1.38	3.0	16.91	23	22.00	25	23
	57042	MADISON	1	1.92	4.0	12.12	23	17.00	30	23
	57380	WAGNER	1	0.77	2.0	30.14	23	38.00	16	28
	57031	GAYVILLE	1	0.16	1.0	148.81	23	66.00	8	30
	57028	FLANDREAU	1	0.94	1.0	24.80	23	66.00	8	30

17. Tennessee

Payday lenders in Tennessee operate under the authority of the Deferred Presentment Services Act (DPSA).⁵⁰² For each payday loan issued, the DPSA authorizes lenders to charge a fee equating to an annual rate of interest of 459%.⁵⁰³ However, the Act is clear that the fee is not to be deemed “interest for any purpose of law;” instead, the “fee” is considered compensation to cover a lender’s operating costs.⁵⁰⁴ As a result, the “fees” associated with payday loans under the DPSA avoid the state constitution’s usury provision prohibiting interest in excess of ten percent per year.⁵⁰⁵ In fact, the Act reinforces this notion by specifically exempting the fees charged for payday loans from control by “any other statute governing the imposition of interest, fees or loan charges,”⁵⁰⁶ including the State’s statutory limit of ten percent annual interest for loans of less than \$1000.⁵⁰⁷ Loans may not exceed a duration of 31 days.⁵⁰⁸ After a payday loan is made, the lender may not renew or consolidate the loan with the proceeds of another payday loan made by the same lender.⁵⁰⁹

Tennessee has 1201 payday lenders which translates into 21.05 per 100,000 people.⁵¹⁰ This gives Tennessee one of the highest rates of payday lending in the country, with several counties and ZIP codes ranking among the most densely populated with payday lenders in the country. Military installations in Tennessee include the Naval Support Facility in Millington and a small arsenal in Milan. Of much greater importance is Montgomery County and the town of Clarksville, just across the border from the Army’s Fort Campbell in Kentucky. Montgomery County has 21 payday lenders for its 134,000 residents, including those on the base. In terms of total number of lenders, it ranks thirteenth among Tennessee’s

⁵⁰² TENN. CODE ANN. §§ 45-17-101 to 45-17-119 (2000).

⁵⁰³ *Id.* § 45-17-112(b)(1)-(2) (2000). Specifically, the DPSA authorizes lenders to charge a fee not exceeding the greater of 15% of the face amount of the check or \$30. *Id.* This means that a borrower who writes a check for \$100 actually receives only \$85, with the remaining \$15 going to the lender as its fee; the borrower actually incurs a charge of 17.65%. Consequently, assuming an average payday loan duration of fourteen days, this equates to an annual percentage rate of 459%.

⁵⁰⁴ *Id.* § 45-17-112(b)(2).

⁵⁰⁵ See TENN. CONST. art. XI, § 7.

⁵⁰⁶ TENN. CODE ANN. § 45-17-118 (2000).

⁵⁰⁷ *Id.* § 47-14-104(a).

⁵⁰⁸ *Id.* § 45-17-112(d) (2000).

⁵⁰⁹ *Id.* § 45-17-112(q).

⁵¹⁰ STATE OF TENNESSEE, DEPARTMENT OF FINANCIAL INSTITUTIONS, LICENSED DEFERRED PRESENTMENT LIST, http://www.tennessee.gov/tdfi/Lic_DP.html (last visited Oct. 17, 2005).

95 counties, but in terms of per capita density, Montgomery ranks near the 50th percentile.

Because the most significant military population affecting payday lender location strategies is stationed over the border, the ZIP code level of analysis is most helpful. In Clarksville (ZIP 37042), near Ft. Campbell, there are ten payday lenders and nine banks. However, if one were to drive away from Fort Campbell into other parts of Clarksville, the ratio begins turning toward average. We found that in Clarksville's other two ZIP codes there are eleven payday lenders and 34 banks.⁵¹¹ With at least 2000 military personnel, the Naval support facility near Millington is relatively large, but at only five percent of the population, the military does not attract a large number of payday lenders. Millington itself has seven banks and six payday lenders, a ratio that would be alarming in other states, but in Tennessee, where payday lending is rampant, this ratio is not unusual and is about what one would expect on a per capita basis. Immediately to the south are two ZIP codes (38127 and 38128), which together host 25 payday lenders close to the service members stationed at Millington. ZIP code 38122, which is less than six miles from Millington, ranks second worst in our composite ranking of Tennessee.

⁵¹¹ For a street-level analysis of Fort Campbell, see Part IV.B.8 *supra*.

Table 29. Tennessee: Top 30 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday Lenders	Exp. PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
Mid South-New Support-5 mi	37412	CHATTANOOGA	17	4.33	6.0	82.70	9	5	6	1
	38122	MEMPHIS	18	5.18	8.0	73.20	6	10	13	2
	38555	CROSSVILLE	19	3.88	14.0	103.20	5	3	28	3
	38115	MEMPHIS	22	8.47	11.0	54.69	3	21	14	4
	38118	MEMPHIS	23	9.98	11.0	48.53	2	30	12	5
	37209	NASHVILLE	16	7.30	6.0	46.17	10	35	8	6
	38464	LAWRENCEBURG	14	4.58	12.0	64.41	12	13	40	7
	37411	CHATTANOOGA	11	3.69	8.0	62.75	21	15	31	8
	37303	ATHENS	14	5.02	14.0	58.71	12	17	46	9
	37055	DICKSON	14	5.06	14.0	58.20	12	18	46	10
Milan Arsenal	37211	NASHVILLE	24	13.40	11.0	37.70	1	68	9	10
	38358	MILAN	8	2.46	5.0	68.40	46	12	22	12
	37321	DAYTON	9	3.95	5.0	47.93	39	32	20	13
	37745	GREENEVILLE	8	3.44	5.0	48.97	46	27	22	14
	37766	LA FOLLETTE	10	3.95	10.0	53.29	29	23	46	15
	38111	MEMPHIS	15	9.12	6.0	34.64	11	78	10	16
	38401	COLUMBIA	21	10.69	20.0	41.36	4	53	45	17
	38116	MEMPHIS	18	10.74	13.0	35.28	6	75	27	18
	37407	CHATTANOOGA	6	1.65	4.0	76.75	73	9	29	19
	37415	CHATTANOOGA	10	4.75	9.0	44.31	29	41	42	20
Mid South-New Support-5 mi	37918	KNOXVILLE	14	7.58	13.0	38.90	12	60	44	21
	37748	HARRIMAN	8	4.04	4.0	41.72	46	52	19	22
	38583	SPARTA	9	4.36	7.0	43.49	39	45	34	23
	37388	TULLAHOMA	10	5.20	10.0	40.47	29	55	46	24
	37388	TULLAHOMA	10	5.20	10.0	40.47	29	55	46	25
	37416	CHATTANOOGA	7	3.07	7.0	48.02	59	31	46	26
	38012	BROWNSVILLE	7	3.27	6.0	45.07	59	37	41	27
	37324	DECHERD	4	1.08	3.0	78.16	97	8	35	28
	37347	JASPER	5	1.64	5.0	64.17	84	14	46	29
	38501	COOKEVILLE	18	6.72	24.0	56.39	6	19	119	29

The other high-ranking ZIP codes in Tennessee include a few county seats in Eastern Tennessee. Interestingly, the number one ZIP code in Tennessee is Chattanooga (ZIP 37412) which borders Georgia along Interstate 75, reminiscent of the Georgia border-town phenomena we observed in Alabama, South Carolina, and Florida.

18. *Texas*

The Texas Legislature has not adopted a statute that regulates payday lenders separately from other small consumer lenders in the state. This means that lenders licensed under Texas's small loan law who wish to offer payday loans must comply with the state's traditional small loan interest rate cap of 48% per annum.⁵¹² However, Texas law also allows licensed lenders to charge an additional "acquisition" fee of up to ten dollars per loan.⁵¹³ When combined, the interest and acquisition fee amount to an effective annual percentage rate of about 309%, assuming a \$100 loan with an initial term of fourteen days.⁵¹⁴ At the end of the loan period, the lender may either renew the loan continuously or convert the loan from a single payment balloon loan to a declining balance installment note.⁵¹⁵ Because Texas's price limits are lower than many states, a significant percentage of payday lenders in Texas have turned to charter-renting relationships with out-of-state banks. Consumer advocates have reported that over one thousand payday outlets in the state are circumventing the 48% interest plus ten dollar fee price limitation.⁵¹⁶ In 2002, for example, Check 'N Go alone

⁵¹² 7 TEX. ADMIN. CODE § 1.605(c) (2005); TEX. FIN. CODE ANN. § 342.252(3)(B) (Vernon Supp. 2004).

⁵¹³ 7 TEX. ADMIN. CODE § 1.605(c) (2005); TEX. FIN. CODE ANN. § 342.252(3)(A) (Vernon Supp. 2004).

⁵¹⁴ For example, a consumer borrowing \$100 would need to pay a ten dollar acquisition charge in addition to interest, which, at an annual rate of 48%, would be \$1.87 if the borrower planned to repay the loan after fourteen days. Consequently, the total fees of \$11.87 represent 11.87% interest over the two-week period, which is the equivalent of an annual rate of interest of 309.47%. Loans with larger principles will have smaller annual percentage rates because lenders cannot proportionally increase the ten dollar acquisition charge. Thus, a fourteen-day loan of \$300 would have a maximum finance charge of \$15.60 and an annual percentage rate of 135.57%. See 7 TEX. ADMIN. CODE § 1.605(c) Exhibit 1 (2005). This creates an incentive to induce borrowers to make multiple loans in smaller increments. Thus, Texas regulators, consumer attorneys, and courts should carefully give careful scrutiny to payday lending arrangements where multiple loans are taken from the same lender.

⁵¹⁵ *Id.* § 1.605(f)(1).

⁵¹⁶ CONSUMER FEDERATION OF AMERICA, PAYDAY LENDERS USE FDIC BANKS AND SHAM REBATES TO PEDDLE EXORBITANTLY PRICED SMALL LOANS (Mar. 31, 2004), http://www.consumerfed.org/033104_2004payday.html.

extended more than \$1 million in payday loans to Texas consumers by renting a charter from Ohio-based First Place Bank.⁵¹⁷

Texas is an expansive state, with a very large and very diverse population, including pockets of extreme poverty, numerous large metropolitan areas, and a long border with Mexico. This variety creates several variables that would presumably draw payday lenders away from military bases, leading one not to expect the same high concentrations of payday lending around military bases in the Lone Star State. Nevertheless, payday lenders have many bases to target in Texas, including seven large installations and dozens of smaller facilities scattered around the state. Because the bases are located in a variety of geographic and demographic settings, Texas is an ideal location for close inspection.

However, because Texas has the same licensing rules for payday lenders as it does for other consumer lenders, the state's Consumer Credit Commissioner does not maintain a separate database of lenders offering payday loans. Rather their registry of consumer lenders includes not only payday lenders, but also pawn shops, tax preparation offices, signature loan companies, and others. The Consumer Credit Commission lists 3239 licensed consumer lenders, all of whom have the legal authority to make payday loans.⁵¹⁸ Nevertheless, many of these lenders have different business models and do not engage in payday lending. In an attempt to get a more accurate count of payday lenders in Texas, we again turned to the Reference USA business database, which lists 1664 payday lenders, or about eight payday lenders per 100,000 people, ranking Texas fifteenth of our 20 states surveyed.⁵¹⁹

In spite of our initial hypothesis to the contrary, many of the counties with excess payday lenders are those with a military base. The worst county in the state is Wichita County, home to Sheppard Air Force Base and its nearly 10,000 personnel. With 132,000 people, 35 banks, and 22 payday lenders, Wichita county ranks high in all three categories of measurement and has about twelve more payday lenders than statistically expected. Ranking second is Nueces County, home to Corpus Christi and its Naval Air Station. There are over

⁵¹⁷ See Letter to James E. Gilleran, Director of the Office of Thrift Supervision (Jan. 3, 2003), <http://www.naca.net/OTSletter.doc>.

⁵¹⁸ STATE OF TEXAS, OFFICE OF CONSUMER CREDIT COMMISSIONER, LICENSED LENDER LIST (Dec. 2003) (on file with authors).

⁵¹⁹ Reference USA, Category Heading: Check Cashing Services, *available at* <http://www.referenceusa.com/> (last visited Oct. 17, 2005). See *infra* note 407, and accompanying text (discussing statistical reliability of Reference USA database). In cross-checking the Reference USA figure, we found 1,570 businesses statewide with the terms such as "Advance," "Payday," "Cash," and "EZ" in the business name in the state's list of small loan companies. STATE OF TEXAS, OFFICE OF CONSUMER CREDIT COMMISSIONER, LICENSED LENDER LIST (Dec. 2003) (on file with authors).

300,000 people and 77 banks in this county, but it has 45 payday lenders—20 more than our predictions based on population. El Paso County, home to Fort Bliss, ranks ninth worst in the state with 70 banks and 61 payday lenders for approximately 680,000 residents. Goodfellow Air Force Base is in Tom Green County; this county ranks tenth worst statewide with 104,000 people, 29 banks, and fourteen payday lenders. In fact, of the ten largest military bases in Texas, only Laughlin and Dyess Air Force Bases are not in or bordering one of the worst sixteen counties in Texas for payday lending. Because there are 245 counties in the state, this is a highly suggestive statistic.

There are 1745 ZIP codes in Texas and dozens of military installations. Therefore, we must limit our discussion to the largest handful of installations in the state. Almost every base in the state has a ZIP code adjacent to it that has payday lenders in excess of statewide averages. Several of the bases that have closed within the last ten years, such as Carswell Air Force Base, Reese Air Force Base, Bergstrom Air Force Base, and Chase Naval Air Station also have adjacent ZIP codes with large numbers or high densities of payday lenders. Though Dyess Air Force Base in Abilene and Laughlin Air Force Base in Del Rio do have more payday lenders nearby than we predicted based on local populations, they are the only two bases out of nearly a dozen we examined that do not have unusually large numbers of payday lenders in the neighboring ZIP codes.

Sheppard Air Force Base, perhaps the second largest Air Force Base in the country, has within three miles of its gates two ZIP codes (76301 and 76306) that rank in the top 25 statewide and a third ZIP code (76308) 4.5 miles away that ranks fifty-second out of 1745 ZIP codes. In the two closest ZIP codes, there are only four banks but twelve payday lenders. That is 9.25 payday lenders above statistical expectations for the populations in those ZIP codes.

San Angelo ZIP code 76903 ranks forty-seventh in the state, easily among the worst five percent statewide. This ZIP code borders Goodfellow Air Force Base and has a population of about 32,000. We counted eleven banks in this ZIP code and eight payday lenders, which is 5.5 more payday lenders than expected based on statewide averages.

Corpus Christi has multiple bases and excess payday lending capacity. Although the Naval Air Station is somewhat separated from the rest of Corpus Christi, it is just over three miles to a business district (ZIP code 78411) that ranks eleventh worst in Texas. It has twelve banks and twelve payday lenders, ten over statistical expectations. Adjacent to ZIP 78411 are several other ZIP codes badly overrepresented by the payday lending industry, including 78415, due south of base, which has at least eight payday lenders and only one bank for almost 40,000 people. Interestingly, there are 26 establishments with a license to make short-term loans here according to State of Texas. If they were all making payday loans, this would be one the heaviest concentrations of payday lenders in the country. Using our conservative estimate, there are at least five more payday

lenders than one would expect for the local population, and about 20 extra payday lenders if we were to define them as the State of Texas does.

There are six military bases in and around San Antonio, two of which are partially closed. Still, with over 30,000 active duty troops in Bexar County, greater San Antonio remains one of the great military towns in the country. It also ranks among the great payday lending cities in the nation. Among the six bases, all but the mostly closed Camp Bullis have an adjacent ZIP code with an unexpectedly high number of payday lenders.

The third worst ZIP code in Texas is ZIP code 78218. Here, on the northeast side of the Army's Fort Sam Houston, there are only three banks, but eleven payday lenders. For the 30,000 people who live there, that is 8.56 more payday lenders than statistically expected. Three other nearby ZIP codes (78202, 78203 and 78220) together contain another six payday lenders and three banks, raising the total number of excess payday lenders in the area by another 3.25.

There are twelve ZIP codes adjacent to or within a few miles of Lackland and Kelly Air Force Bases, which are essentially adjoined and function together. Three of these ZIP codes rank among the worst 30 ZIP codes statewide, and ZIP code 78238 is twelfth worst. Several of the remaining twelve nearby ZIP codes also have unexpectedly high concentrations of payday lenders. Combined, these twelve ZIP codes contain 321,000 people and 25 banks, but 40 payday lenders, which is fourteen more than the population warrants. Two ZIP codes (78227 and 78238) contain most of this excess capacity. It is very likely that these neighborhoods are where most of the personnel from Lackland and Kelly do their shopping because these ZIP codes are both within three miles of the base and straddle the Interstate 410 beltway. These two ZIP codes combined should have less than five payday lenders based on their combined population, but seventeen have set up shop here close to the service persons at Lackland-Kelly Air Force Base.

It is about seven miles between the eastern gates of Kelly Air Force Base and the western edge of Brooks Air Force Base. Lying halfway between the two and within three miles of each on Texas Loop Road 13 is ZIP code 78221. This ZIP code has five banks and eight payday lenders, almost five more than it should have given its population. Even Randolph Air Force Base in the northeastern suburbs of San Antonio has a payday lending surplus. Although fewer than 15,000 people live there and there are only five banks, four payday lenders have set up shop, which is about three too many for that population.

Soldiers stationed at Fort Bliss in El Paso may have the greatest number and variety of short-term loan options of any persons in the military. There are 182 licenses issued for El Paso County and we estimate that at least 61 of those licensees are actually making payday loans. Unlike many of the other communities we have examined, we cannot be as certain that the military is the sole focus of the payday lending industry here. Because El Paso is a border town,

we believe that many of the payday lenders here are at least as involved in check cashing and currency exchanging as they are in lending. Nevertheless, this fact does not reduce the availability of high-interest, short-term loans to soldiers at Fort Bliss, and may only serve to intensify the competition and marketing activities of payday lenders in the region.

Table 30. Texas: Top 30 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 K Pop	LQ	Rnk PD	Rnk PC	Rnk P Brk	Cmpsit Rank	Exp PD	Obs -Exp
Sheppard AFB	Wichita	131664	35	22	16.71	62.36	12	4	8	1	10.31	11.49
NAS Corpus Christi	Nueces	313645	177	45	14.35	58.44	7	13	10	2	25.93	19.97
Cisd Dallas NAS	Ector	121123	26	18	14.86	69.23	19	11	7	3	9.67	8.33
	Potter	113546	32	17	14.97	53.13	20	9	17	4	9.06	7.94
	Maverick	47297	7	7	14.80	100.00	36	12	2	5	3.77	3.23
	Dallas	2218899	533	234	10.55	43.90	2	25	25	6	177.07	56.93
Fort Bliss	Bee	32359	4	5	15.45	125.00	45	6	1	6	2.58	2.42
	Victoria	84088	19	11	13.08	57.89	26	16	11	8	6.71	4.29
	El Paso	679622	70	61	8.96	57.14	6	44	4	9	54.23	6.77
Good Fellow AFB	Tom Green	104010	29	14	13.46	48.28	23	15	22	10	8.90	5.70
Cisd Bergstrom AFB	Howard	33627	7	5	14.87	71.43	45	10	5	10	2.68	2.32
	Hale	36602	11	6	16.39	54.55	41	5	15	12	2.92	3.08
	Travis	812280	193	82	10.10	42.49	5	28	30	13	64.82	17.18
	Angeline	80130	23	11	13.73	47.83	26	14	23	13	6.39	4.61
Fort Hood	Lampasas	17762	7	4	22.62	57.14	51	2	12	15	1.42	2.58
Cisd Carswell AFB	Tarrant	1446219	338	141	9.75	41.72	3	32	31	16	115.41	25.59
Lackland Ft Sam Houston	Bexar	1302931	239	124	8.90	54.15	4	46	16	18	111.16	12.84
Randolph AFB	Webb	193117	36	19	9.84	52.78	18	31	18	18	15.41	3.59
Chambers Midland	Harris	3400578	784	324	9.53	41.33	1	35	32	19	271.37	52.63
	Jim Wells	39326	7	5	12.71	71.43	45	19	5	20	3.14	1.86
	Uvalde	25926	7	4	15.43	57.14	51	7	12	21	2.07	1.93
	Chambers	26031	7	4	15.37	57.14	51	8	12	22	2.08	1.92
McLennan Jefferson	Midland	116009	38	15	12.93	39.47	22	18	34	23	9.26	5.74
	McLennan	213517	46	20	9.37	43.48	15	37	26	24	17.04	2.96
	Jefferson	252051	53	23	9.13	43.40	10	41	27	24	20.11	2.89
	Walker	61758	10	6	9.72	60.00	41	33	9	26	4.93	1.07
Wilbarger Ellis	Kent	859	1	1	116.41	100.00	82	1	2	27	0.07	0.93
	Wilbarger	14676	7	3	20.44	42.86	59	3	28	28	1.17	1.83
	Ellis	111360	28	11	9.88	39.29	26	30	35	29	8.89	2.11
	Johnson	126811	30	12	9.46	40.00	25	36	33	30	10.12	1.88

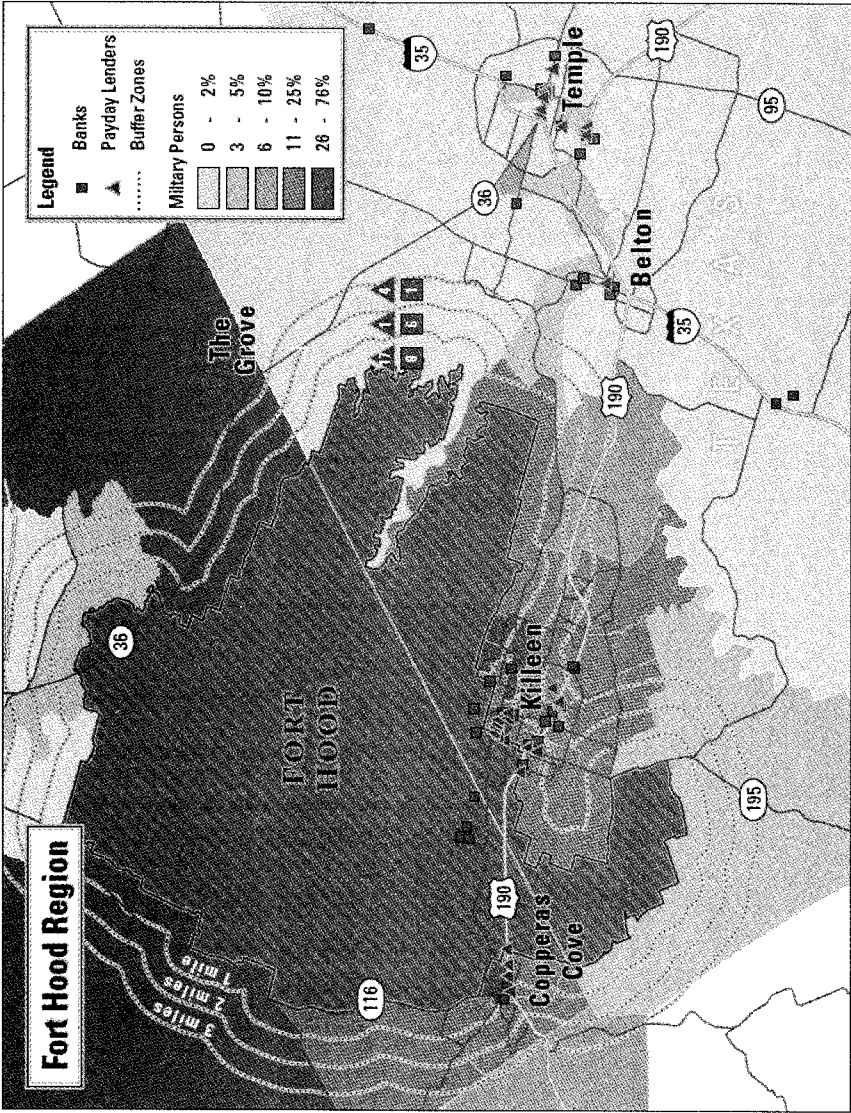
There are four ZIP codes in El Paso that rank in the top 100 statewide, but only one of them, 79901, which ranks thirtieth, actually borders Mexico. This suggests that the military is at least as attractive to check casher-payday lenders as cross-border transient workers are. The more intensive payday lending activity appears to be closer to Fort Bliss. ZIP code 79925, which is partly surrounded by Fort Bliss, is the fourteenth worst in the state for payday lending. There are about 41,000 people here and seven banks, but ten payday lenders, seven above statistical expectations. The adjacent ZIP code 79903, which also borders Ft. Bliss has three banks and three payday lenders, however, 20 companies have a license to make payday loans here, making it potentially one of the most densely crowded ZIP codes in the country for short-term loans. The ZIP code bordering the southwestern section of Fort Bliss (79904) also seems heavy on payday lenders with four, even though it has no banks, making it one of top three ZIP codes statewide in terms of the ratio of payday lenders to banks.

Fort Hood, which is one of the largest military bases in the United States, has more than its share of payday lenders lined up at its many gates, but the Killeen area is a little less saturated with payday lending than some of the other military towns in Texas. Because Fort Hood is so massive, its off-base commercial districts are a bit more scattered than those around many other bases. The main commercial district just outside Fort Hood is Killeen's 76541 ZIP code. Here, we found eleven banks and nine payday lenders, which is about 7.3 more payday lenders than would be expected for the population in that ZIP code. Even if we added 43,000 soldiers from Fort Hood to that ZIP code's population, we would still only expect there to be five payday lenders, four less than there are. This ZIP code ranks twenty-seventh worst statewide on our composite index but has the ninth most lenders of ZIP codes statewide. Using the State of Texas list, this ZIP code has the fourth most small-loan licenses in the state with eleven. Clearly, there are many businesses offering loans next to Fort Hood. There are other nearby ZIP codes that add to the availability of quick, high-interest loans for soldiers. Copperas Cove, other parts of Killeen, and nearby Temple, Texas all have excess payday lending capacity.

Table 31. Texas: Top 30 ZIP Codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday Lenders	Exp PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
	76033	CLEBURNE	8	1.74	0.0	36.72	21	17	1	1
	77081	HOUSTON	12	3.90	1.0	24.52	2	47	5	2
	76278	SAN ANTONIO	11	2.44	3.0	35.92	4	18	14	3
	77091	HOUSTON	9	1.84	3.0	38.94	13	14	52	4
	79107	AMARILLO	9	2.55	2.0	28.21	13	29	43	5
	76301	WICHITA FALLS	8	1.41	4.0	45.35	21	7	50	6
	76103	FT. WORTH	7	1.15	2.0	48.72	37	6	48	7
	76111	FT. WORTH	7	1.63	1.0	34.31	37	22	41	8
	78702	AUSTIN	7	1.79	2.0	31.13	37	26	48	9
	76115	FT. WORTH	6	1.57	1.0	30.51	57	27	42	10
	78411	CORPUS CHRISTI	12	2.21	12.0	43.26	2	8	117	11
	78238	SAN ANTONIO	9	1.68	7.0	42.68	13	9	108	12
	76112	FT. WORTH	11	3.13	8.0	28.02	4	30	101	13
	78415	CORPUS CHRISTI	8	3.09	1.0	20.65	21	78	40	14
	79763	ODESSA	6	2.43	0.0	19.72	57	88	2	15
	76925	EL PASO	10	3.23	7.0	24.20	8	51	30	16
	76011	ARLINGTON	8	2.39	6.0	26.75	21	37	105	17
	78753	AUSTIN	10	3.10	9.0	25.74	8	41	115	18
	77063	HOUSTON	8	2.29	7.0	27.84	21	32	113	19
	75220	DALLAS	9	4.02	3.0	17.85	13	108	52	20
	76306	WICHITA FALLS	4	1.34	0.0	23.78	119	55	3	21
	78227	SAN ANTONIO	8	3.16	5.0	20.19	21	86	87	22
	77506	PASADENA	7	3.21	2.0	17.40	37	113	48	23
	77076	HOUSTON	6	2.34	3.0	20.45	57	84	61	24
	79412	LUBBOCK	4	1.22	1.0	26.11	119	39	45	25
	77055	HOUSTON	11	3.32	12.0	26.44	4	38	164	26
	76041	KILLEEN	9	1.10	11.0	42.36	13	10	194	27
	76221	SAN ANTONIO	7	2.73	4.0	20.41	37	85	86	28
	76504	TEMPLE	5	1.79	2.0	22.25	89	62	57	28
	76007	EL PASO	5	1.12	5.0	35.48	99	19	117	29
	76002	SAN ANTONIO	8	2.57	11.0	25.18	21	44	202	30
	75244	EL PASO	4	2.55	0.0	13.43	119	233	3	31

Because Fort Hood is so large and houses so many soldiers, we chose to analyze payday lending activity in the neighborhoods surrounding it. Within three miles of Fort Hood's perimeter, there are at least eighteen payday lenders, and thirteen of those are within one mile of base. For soldiers and their families driving east off-base using the Tank Destroyer Boulevard exit, they would leave base onto Rancier Boulevard. Before they had traveled 1000 yards past the security gates, they would pass no fewer than seven payday lenders. After that initial tangle of payday lenders, they could drive to the nearby town of Belton and only pass one more payday loan shop. If the family turned right off Tank Destroyer and went south on Fort Hood Street (Highway 195), they would pass at least three additional payday lenders before they made it to U.S. Highway 190, a mile and a half from the gates. Once they were at that intersection, within two miles in any direction they could find six additional payday lenders. If the family were to leave Fort Hood at the Clear Creek exit and drive west to the next exit off-base, they would come to Copperas Cove. Just a few feet into Copperas Cove, they would pass their first payday lender; two more are within the first mile and two additional ones are in the second mile.



19. Virginia

Payday lenders in Virginia operate under the authority of the Commonwealth's Payday Loan Act (PLA).⁵²⁰ The lender may charge a fee no greater than fifteen percent of the amount of the loan proceeds,⁵²¹ which is equivalent to an annual percentage rate of interest of 390%.⁵²² At the end of the original loan period, a lender may not refinance, renew, or extend any loan.⁵²³ Furthermore, a lender may not extend a payday loan to the borrower to pay off a previous loan from the same lender.⁵²⁴

Virginia is another state with vast numbers of military personnel, rivaling California for supremacy as the leading military state. Most of Virginia's military population is in two areas: near Washington D.C., where there are more command and intelligence personnel, and the Newport-Portsmouth region where there are many thousands of enlisted troops. Virginia ranks at the bottom of the states in terms of numbers and densities of payday lenders. Although the population numbers over seven million and there are 2434 banks, there were only about 460 payday lenders registered with state authorities in 2004.⁵²⁵ Statewide, there are on average 6.50 payday lenders per 100,000 people, the lowest rate of any state other than New York. This is presumably a by-product of the short history of payday lending in Virginia, where the activity was made legal on July 1, 2002. Though legal only a few years in Virginia, the densities of payday lenders around military bases differs little from what we observed in other parts of the country where it has been legal for many years.

⁵²⁰ VA. CODE ANN. §§ 6.1-444 to 471 (Supp. 2004). The state legislature enacted the PLA in 2002, since which time five hundred payday lending outlets have sprung up around the Commonwealth. See Bill Sizemore, *State Lawmakers Want to Regulate Payday Loans*, VIRGINIAN-PILOT, Jan. 22, 2005, <http://home.hamptonroads.com/stories/story.cfm?story=80962&ran=135970>.

⁵²¹ VA. CODE ANN. § 6.1-460 (Supp. 2004).

⁵²² A consumer borrowing \$100 must write a check for \$115 to cover the interest charged by the lender. Assuming an average payday loan duration of fourteen days, this 15% rate of interest equals an annual rate of interest of 390%.

Although Virginia's usury law invalidates contracts "made for the payment of interest on a loan greater than twelve percent per year," the law specifically exempts payday loans from its control. VA. CODE ANN. § 6.1-330.55 (Supp. 2004).

⁵²³ *Id.* § 6.1-459(6).

⁵²⁴ *Id.* § 6.1-459(11). Of course this provision does not prevent a lender from extending a payday loan to a borrower in order to pay off a payday loan obtained from another lender.

⁵²⁵ COMMONWEALTH OF VIRGINIA STATE CORPORATION COMMISSION, BUREAU OF FINANCIAL INSTITUTIONS, PAYDAY LENDERS LICENSED IN VIRGINIA, <http://www.scc.virginia.gov/division/banking/paydaylend.htm> (last visited Oct. 17, 2005).

At the county level,⁵²⁶ the pattern of payday lending is evidently focused on military bases. The number one county for payday lending in Virginia is Prince George County, home of the Army's Fort Lee and Logistics Center. The population of just over 33,000 people in Prince George County is served by five banks; however, fourteen payday lenders have moved in. Prince George ranks first of 135 counties in terms of density per capita, first in density per bank, and its fourteen payday lenders are about twelve more than statistically expected for this county. Henrico County, which is about 6.5 miles north of the base on Interstate 295, ranks tenth worst in the state and offers 30 additional payday lenders.

Perhaps the most militarized region in the United States is the Norfolk-Portsmouth-Newport News region. The four counties that house most of the military population in the area (Newport News, Hampton, Norfolk and Portsmouth) have a combined population of over 661,000, 63 banks, and a whopping 101 payday lenders. This stands in stark contrast to the statewide ratio of one payday lender to every five banks. Given the population in these counties, this is 56 payday lenders above what statewide averages would predict. Each of the four counties in the region ranks among the ten worst in Virginia.

⁵²⁶ Virginia has both counties in the classic sense and a number of municipal districts that are classified as counties by the government and are used as such in our analysis.

Table 32. Virginia: Top 30 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 KPop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
Fort Lee	Prince George	33047	5	14	42.36	280.00	10	1	1	1	2.15	11.55
	Pittsylvania	61745	11	17	27.53	154.55	7	3	2	1	4.01	12.99
	Multiple Sites-Norfolk	100565	17	21	20.85	123.33	5	5	3	3	6.54	14.46
Fort Eustis Langley AFB	Henry	57930	17	11	18.99	64.71	11	6	8	4	3.76	7.24
	Newport News	180150	41	27	14.99	65.35	4	16	7	5	11.71	15.29
	Washington	51103	22	11	21.53	50.00	11	4	12	5	3.32	7.68
Langley AFB, NS Norfolk	Hampton	146437	27	18	12.29	66.67	6	19	5	7	9.52	8.48
	Multiple Sites-Norfolk	234403	63	35	14.93	55.56	2	18	10	7	15.23	19.77
	Southampton	17482	7	5	28.60	71.43	25	2	4	9	1.14	3.86
Multiple Sites-Norfolk	Henrico	262300	83	30	11.44	36.14	3	25	17	10	17.05	12.95
	Halifax	37355	11	6	16.06	54.55	23	12	11	11	2.43	3.57
	Roanoke City	94911	49	15	15.80	30.61	9	13	24	11	6.17	8.83
NAS Oceana, Fort Story, others	Lynchburg	65269	39	11	16.85	28.21	11	10	26	13	4.24	6.76
	Virginia Beach	425257	102	40	9.41	39.22	1	34	15	14	27.64	12.36
	Augusta	65615	16	8	12.19	50.00	19	20	12	15	4.26	3.74
NSY Norfolk, others	Bedford	60371	11	7	11.59	63.64	21	23	9	16	3.92	3.08
	Wythe	27599	16	5	18.12	31.25	25	7	23	17	1.79	3.21
	Wise	40123	17	6	14.95	35.29	23	17	19	18	2.61	3.39
Grayson	Chesapeake	199184	48	17	8.53	35.42	7	36	18	19	12.94	4.06
	Tazewell	17917	7	3	16.74	42.86	36	11	14	19	1.16	1.84
	Smyth	44598	30	7	15.70	23.33	21	14	33	21	2.90	4.10
Roanoke	Pulaski	33081	12	4	12.09	33.33	28	21	20	22	2.15	1.85
	Alleghany	35127	11	4	11.39	36.36	28	26	16	23	2.28	1.72
	Montgomery	85778	31	9	10.49	29.03	17	28	25	23	5.57	3.43
Winchester	Giles	12926	6	2	15.47	33.33	41	15	20	25	0.84	1.16
	Rockingham	83629	33	8	9.57	24.24	19	32	31	26	5.43	2.57
	Amherst	23585	32	4	16.96	12.50	28	9	48	27	1.53	2.47
Amherst	Rockingham	16657	8	2	12.01	25.00	41	22	28	28	1.08	0.92
	Amherst	67725	21	5	7.38	23.81	25	38	32	29	4.40	0.60
	Amherst	31894	11	3	9.41	27.27	36	33	27	30	2.07	0.93

Our analysis of payday lending using ZIP code data revealed a strong bias toward military areas as well. Newport News (ZIP 23605) ranked worst in the state on our composite index for payday lending. Only a few miles in any direction to a number of military bases and home to a significant off-base population, this ZIP code has ten payday lenders but only one bank for its almost 15,000 people, of whom about one-fourth are military personnel. This per capita density is roughly ten times the statewide density for payday lending and its payday lender-to-bank ratio ranks third worst in the state.

Making these statistical anomalies more remarkable is the fact that Newport News is bordered by other ZIP codes with similar densities of payday lenders. Though this ZIP code is the worst, it is closely followed by a dozen or so neighbors in the statewide rankings. In this very small four-county area, five of the top ten and ten of the top 20 ZIP codes for payday lending are located. These ten ZIP codes contain 63 banks and 74 payday lenders—54 more payday lenders than statistically expected based on the population.

Looking outside the Newport-Norfolk region, other military bases also rank high in payday lender density. The second highest composite ranking ZIP code among the 847 ZIP Code regions in Virginia was adjacent to Fort Lee. Petersburg (ZIP 23805) has five banks and nine payday lenders. Only one payday lender would be predicted based on the small population here and statewide averages. On the other side of Fort Lee, Colonial Heights (ranked thirteenth), and Hopewell (ranked thirty-fifth) combine to provide an additional eleven payday lenders, almost eight more than their combined populations would predict. The other top ranking ZIP codes were all border towns with regional service functions in western Virginia.

Table 33. Virginia: Top 30 ZIP codes Ranked by Payday Lending

Nearby Base	ZIP	Town or City	Payday Lenders	Exp PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
Langley-4 miles Ft Lee	23605	NEWPORT NEWS	10	0.96	1.0	67.90	3	5	3	1
	23805	PETERSBURG	9	1.16	5.0	50.44	6	8	8	2
Norfolk/Portsmouth	24540	DANVILLE	12	2.42	5.0	32.24	1	21	5	3
	23702	PORTSMOUTH	5	0.76	0.0	42.86	23	11	1	4
NS Norfolk	24202	BRISTOL	5	0.77	3.0	42.06	23	13	12	5
	23502	NORFOLK	9	1.38	13.0	42.45	6	12	31	6
NS Norfolk Norfolk/Portsmouth	24605	BLUEFIELD	6	0.70	8.0	55.63	20	7	29	7
	23505	NORFOLK	7	1.76	7.0	25.91	13	29	16	8
NS Norfolk	23701	PORTSMOUTH	7	1.76	7.0	25.90	13	30	16	9
	23618	NORFOLK	8	1.92	9.0	27.06	10	27	24	10
Norfolk/Portsmouth Ft Eustis	23851	FRANKLIN	5	0.87	6.0	37.36	23	17	25	11
	23703	PORTSMOUTH	6	1.79	9.0	27.78	20	38	8	12
Ft Lee	23608	NEWPORT NEWS	7	2.79	1.0	16.87	13	53	4	13
	23223	RICHMOND	7	2.81	3.0	16.21	13	56	7	14
Langley AFB	23834	COLONIAL HTS	7	1.54	12.0	29.61	13	23	46	15
	23666	HAMPTON	9	3.17	13.0	18.48	6	45	31	15
NAS Oceana-4 mi	24112	MARTINSVILLE	8	2.37	13.0	21.99	10	37	36	17
	23464	VIRGINIA BEACH	10	4.59	9.0	14.15	3	67	15	18
NS Norfolk	24012	ROANOKE	10	1.78	19.0	36.56	3	19	64	19
	24592	SOUTH BOSTON	5	0.89	9.0	36.73	23	18	47	20
Langley AFB	23324	CHESAPEAKE	4	1.41	3.0	19.40	32	46	14	21
	24073	CHRISTIANSBURG	7	1.60	14.0	28.43	13	25	54	21
Langley AFB	23661	HAMPTON	3	0.93	1.0	29.93	48	40	6	23
	24354	MARION	4	1.11	6.0	23.42	32	35	30	24
NS Norfolk-5mi	23863	HAMPTON	3	0.92	2.0	21.15	48	39	13	25
	23463	VIRGINIA BEACH	1	0.00	0.0	38.615	97	1	2	25
Norfolk/Portsmouth	24210	ABINGDON	6	0.96	14.0	40.84	20	14	75	27
	24382	WYTHEVILLE	5	0.91	12.0	35.71	23	20	71	28
Ft Story	23707	PORTSMOUTH	3	0.96	4.0	30.38	48	41	27	28
	23416	OAK HALL	1	0.05	1.0	136.05	97	3	16	29
Ft Story	23230	RICHMOND	4	0.43	11.0	61.06	32	6	78	29
	23432	VIRGINIA BEACH	11	4.09	22.0	17.90	7	51	73	30

The four-county Chesapeake Bay region was chosen for street-level analysis. Our analysis at this resolution reconfirmed our findings using ZIP code and county data. High concentrations of payday lenders are visible near the gates of nearly every installation in the Chesapeake Bay area, but the pattern is not as distinct as it appears elsewhere. The relatively greater dispersion of payday lenders in this region is probably due to the sheer number of installations and the ubiquity of military personnel in all parts of these four counties.

Interestingly, but perhaps not surprising given the location and role of the installations at Quantico Marine Corps Base and Fort Belvoir near Washington D.C., neither base is significantly affected by payday lending. The counties and ZIP codes near these installations each rank near the median among their counterparts in Virginia.

20. Washington

In Washington, a payday lender must be a licensed “check casher”⁵²⁷ with a small loan endorsement.⁵²⁸ Although Washington’s usury laws generally prohibit parties from contracting for a rate of interest in excess of 12% per year,⁵²⁹ the State authorizes payday lenders to charge a rate of interest as high as 390%.⁵³⁰ In addition to the interest, a lender may charge a one-time returned check fee in an amount determined by Washington’s Director of Financial Institutions.⁵³¹ If a borrower realizes that payment of the loan on the date originally specified will not be possible, he or she may convert the loan to a payment plan, which generally must have a duration of 60 days.⁵³² The lender may charge the borrower a one-time conversion fee of ten to fifteen percent, but it cannot assess any other fee or charge as a result of converting a payday loan into a payment plan.⁵³³ Regulators have found some of the largest lenders in the state regularly ignoring price limitations and engaging in illegal collection behavior.⁵³⁴

⁵²⁷ WASH. REV. CODE § 31.45.010(5) (2005).

⁵²⁸ *Id.* §§ 31.45.030, 31.45.073(1).

⁵²⁹ *Id.* § 19.52.020(1).

⁵³⁰ Specifically, a payday lender may charge interest of 15% on the first \$500 loaned, and ten percent on any amount loaned from \$500 to \$700. *Id.* § 31.45.073(3). Assuming an average payday loan of \$100 for fourteen days, the effective annual rate of interest would be 390%.

⁵³¹ *Id.* § 31.45.082.

⁵³² *Id.* § 31.45.084(1).

⁵³³ WASH. REV. CODE §§ 31.45.084(1), 31.45.073(3) (2005). The lender may charge a set-up fee of 15% for any principal amount of \$500 or less and ten percent for any principal amount greater than \$500. *Id.* § 31.45.073(3).

⁵³⁴ ConsumerAffairs.com, *Fast Cash Loans Faces Charges*, Sept. 29, 2004, http://www.consumeraffairs.com/news04/fast_cash.html.

Washington is another state with several large military installations. Like the others included in our study, payday lending activity appears to be most intense in those locations where the military presence is significant. Washington has approximately 480 payday lenders⁵³⁵ and 1830 banks. That means that there are approximately 8.15 payday lenders per 100,000 persons, a rate that places Washington fourteenth among the 20 states we studied.

At the county level, the number and density of payday lending is most pronounced in those counties with a significant military presence. The county with the highest composite score for payday lending was Spokane County, home to Fairchild Air Force Base. With roughly 55 payday lenders, it has about 20 more than expected based on its population. Ranking second and third worst in the state were Thurston and Pierce Counties respectively. Pierce County is home to McChord Air Force Base and the Army Base at Fort Lewis, which spills over into Thurston County. The two bases together have over 27,000 military personnel, making this area one of the most visible military regions in the country. Together, these two counties have about 94 payday lenders, nearly 20 more than the population would suggest. The other two counties with significant Navy populations, Kitsap and Whidbey Island also rank among the 20 worst counties for payday lending.

⁵³⁵ STATE OF WASHINGTON, DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF CONSUMER SERVICES, LICENSEE LIST, <http://www.dfi.wa.gov/cs/list.htm> (last visited Oct. 17, 2005).

Table 34. Washington: Top 30 Counties Ranked by Payday Lending

Nearest Base(s)	County	Pop	Bnks	PD Lndrs	PD/100 KPop	LQ	Rnk PD	Rnk PC	Rnk P Bnk	Cmpsit Rank	Exp PD	Obs -Exp
Fairchild AFB Fort Lewis Bramerton Navy Sies Fort Lewis, McChord AFB	Spokane	417909	124	55	13.16	44.35	3	2	3	1	34.04	20.96
	Thursdo	207355	64	25	12.06	39.06	5	3	4	2	16.89	8.11
	Pierce	700820	199	69	9.85	34.87	2	8	6	3	57.07	11.93
	Mason	49405	13	7	14.17	63.64	14	1	1	3	4.02	2.98
	Cowlitz	92948	20	11	11.83	55.00	9	5	2	3	7.57	3.43
Okanogan Army Dep. OR	Benton	142475	39	14	9.83	35.90	8	9	5	6	11.60	2.40
	Chelan	66616	24	7	10.51	29.17	14	7	7	7	5.43	1.57
	King	173703	519	132	7.60	25.43	1	17	13	8	141.46	-9.46
	Grays Harbor	67194	33	8	11.91	24.24	13	4	15	9	5.47	2.53
	Clark	345238	88	25	7.24	28.41	5	18	10	10	28.12	-3.12
Bramerton Navy Sies	Jefferson	25953	11	3	11.56	27.27	21	6	11	11	2.11	0.89
	Knap	231959	70	16	6.90	22.86	7	20	16	12	16.89	-2.89
	Asotin	20551	7	2	9.73	28.57	24	11	8	12	1.67	0.33
	Douglas	32603	11	3	9.20	27.27	21	12	11	14	2.66	0.34
	Walla Walla	55180	20	5	9.06	25.00	17	13	14	14	4.49	0.51
MS Everett	Lewis	68600	27	6	8.75	22.22	16	14	17	16	5.59	0.41
	Skegitt	102979	46	9	8.74	19.57	11	15	22	17	8.39	0.61
	Snohomish	60024	173	36	5.94	20.81	4	26	20	18	49.46	-13.35
	Island	71558	23	5	6.99	21.74	17	19	18	19	5.83	-0.83
	Whidbey Island NAS	64525	31	5	7.75	16.13	17	16	24	20	5.25	-0.25
Yakima Training Ctr	Grant	74698	25	5	6.69	20.00	17	21	21	21	6.08	-1.08
	Stevens	40066	7	2	4.99	28.57	24	28	8	22	3.26	-1.26
	Yakima	222581	80	13	4.94	19.33	9	29	23	23	16.13	-7.13
	Franklin	49347	14	3	6.08	21.43	21	23	19	24	4.02	-1.02
	Whatcom	166814	67	9	5.40	13.43	11	26	26	24	13.58	-4.58
Yakima Training Ctr	Lincoln	10184	10	1	9.82	10.00	28	10	28	26	0.83	0.17
	Spokane	417909	124	55	13.16	44.35	3	2	3	1	34.04	20.96
	Okanogan	39564	16	2	5.06	12.50	24	27	27	28	3.22	-1.22
	Adams	16428	10	1	6.09	10.00	28	22	28	28	1.34	-0.34
	Whitman	40740	25	1	2.45	4.00	28	30	30	30	3.32	-2.32

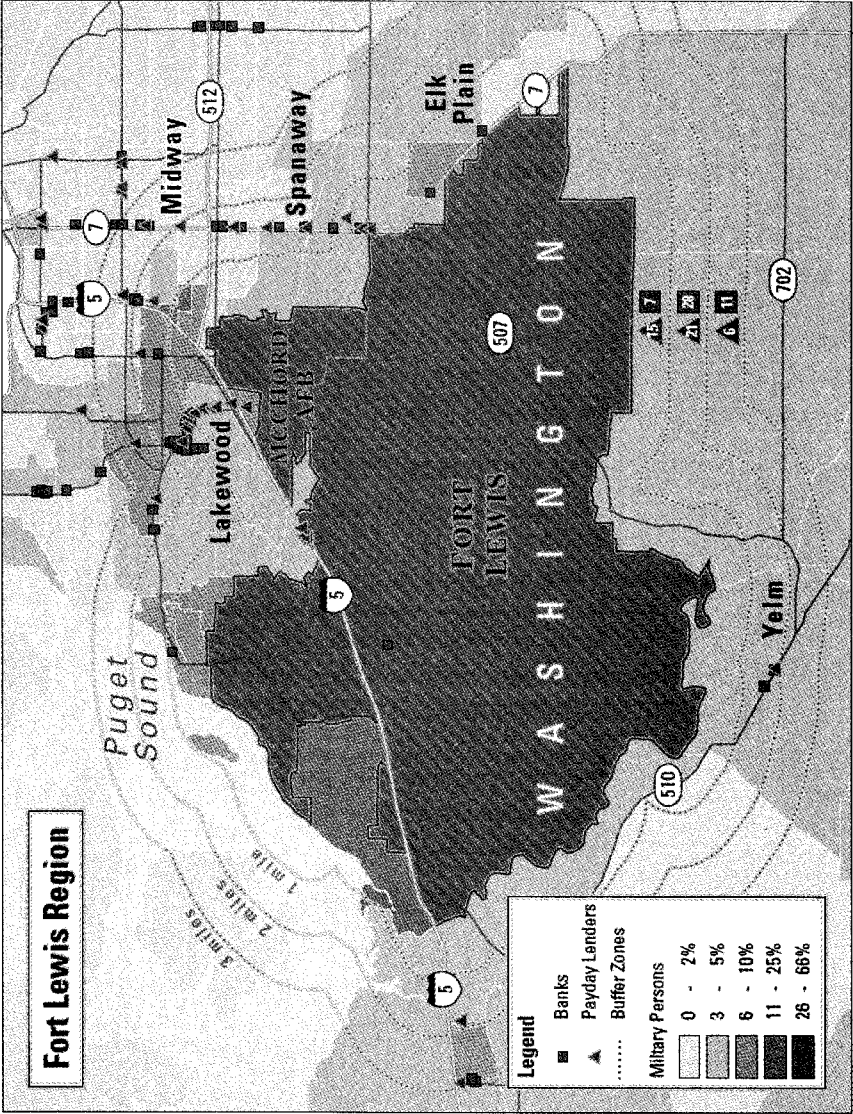
At the ZIP code level, a more telling picture emerges in Washington, especially when we examined the ZIP codes closest to Fort Lewis and McChord Air Force Base. Lakewood (ZIP code 98499), lying adjacent to McChord A.F.B. and just over a mile from Fort Lewis, has the highest composite score in the state. It has more payday lenders (sixteen) than any other ZIP code in the state, as well as the greatest excess number of payday lenders based on population (fourteen), and it is twelfth worst in the state in terms of its payday lender-to-bank ratio. This density of payday lending is all the more impressive considering that six ZIP codes bordering Lakewood combined have an additional 22 payday lenders, twelve more than predicted in those ZIP codes for their combined population.

ZIP codes in which payday lenders exceed the expected number can be found in close proximity to all of the major bases in Washington, but none of the densities appears as extreme as the density near Fort Lewis. The Bremerton area, with its many scattered facilities has about fourteen payday lenders, which is about six more than our statistical expectation. Even isolated Oak Harbor, with its Air Station at Whidbey Island has five payday lenders, double the amount suggested by its population. The Naval Station at Everett has nearly identical numbers. Service persons at Fairchild Air Force Base have to drive about ten miles to get to the business areas of Spokane, where there are 29 payday lenders and 49 banks in the six ZIP codes along the highway leading to the heart of Spokane. This is about eighteen more payday lenders than we predicted based on the population of those ZIP codes. Spokane includes the second and sixth worst payday lending ZIP codes in the state, and both of these neighborhoods are surely widely visited by the Air Force families in the area, many of whom live off-base in Spokane. It should be noted that Spokane does serve as the regional service hub, and therefore should have some additional commercial activity, but Spokane is easily the most overrun of the many service hubs in Washington in terms of payday lending.

Table 35. Washington: Top 30 ZIP Codes by Payday Lending

Nearby Base	ZIP	Town or City	Payday Lenders	Exp PD	Banks	PD/100K	Rank PD	Rank PC	Rank LQ	Composite Rank
Ft. Lewis	99201	SPokane	8	1.54	6.0	42.20	8	5	11	2
	99202	SPOKANE	8	1.54	6.0	42.20	8	5	11	2
	98055	RENTON	11	2.25	10.0	39.81	2	7	15	2
	98661	VANCOUVER	10	2.96	9.0	27.57	3	16	14	4
McChord AFB	99203	TACOMA	8	2.53	8.0	25.91	6	22	18	5
	99207	SPOKANE	10	3.16	11.0	25.81	3	21	29	6
	99037	VERADALE	4	0.86	4.0	38.09	29	9	16	7
	98032	KENT	8	2.45	11.0	26.63	8	18	34	8
McChord-7miles	98403	TACOMA	3	0.62	2.0	39.40	47	8	8	9
	98148	SEATTLE	3	0.70	2.0	34.71	47	11	8	10
Fort Lewis-McChord	98142	SEATTLE	8	2.42	9.0	17.50	20	12	18	11
	98520	ABERDEEN	6	1.75	9.0	28.01	17	15	38	12
McChord AFB	99206	SPOKANE	7	2.55	11.0	22.35	14	29	40	14
	99206	SPOKANE	7	2.55	11.0	22.35	14	29	40	14
	98031	KENT	9	5.33	9.0	13.76	6	62	16	15
	98002	AUBURN	9	2.52	18.0	29.12	6	14	70	17
Ft. Lewis	98632	LONGVIEW	8	3.81	12.0	17.10	8	45	39	18
	99209	YELLY	3	1.74	3.0	21.39	47	30	16	19
	98009	TACOMA	5	1.58	6.0	20.92	20	33	37	20
	99204	SPOKANE	3	2.59	5.0	15.59	47	41	16	21
Ft. Lewis	99008	EDWALL	1	0.05	0.0	171.82	102	3	1	22
	98198	SEATTLE	4	2.57	3.0	12.70	29	71	13	23
	98531	CENTRALIA	5	1.77	11.0	23.06	20	27	68	24
	98003	FEDERAL WAY	8	3.39	17.0	19.20	8	35	72	24
	99212	SPOKANE	4	1.44	8.0	22.57	29	28	61	26
	99128	FARMINGTON	1	0.03	1.0	246.91	102	1	16	27
	98626	KELSO	3	1.84	2.0	13.29	47	64	8	27
	98506	OLYMPIA	3	1.40	4.0	17.50	47	43	31	29
	98801	WENATCHEE	7	2.98	15.0	19.15	14	36	71	29
	98512	BREMERTON	3	2.81	1.0	9.74	47	99	4	38
McChord AFB	99435	MCCHORD AFB	1	0.64	2.0	194.92	102	2	41	39
	99205	EVERETT	2	1.34	1.0	12.14	75	74	5	42

For the street-level analysis, Thurston and Pierce Counties were chosen as the case study in Washington. Using the three-mile buffer around the ZIP codes at Fort Lewis and McChord Air Force Base, we found 36 payday lenders and 37 banks. Statewide, there are more than four banks for each payday lender. The 216,738 people living within three miles of these bases have more than eighteen payday lenders beyond what is statistically expected for this region. By statewide standards, this is enough payday lenders to serve an additional 441,000 residents. The great majority of these payday lenders are found in two locations. The first is along or near Bridgeport Way, a road that leads north from McChord Air Force Base, and the other is Union Avenue, a road that runs along part of the northern border of Fort Lewis. Densities of payday lenders are very high in these two locations. In one two-mile stretch along Bridgeport Way, there are thirteen payday lending operations, including many of the industry leaders such as Check into Cash, Advance America, Advance Til Payday, etc. Five additional payday lenders are only a couple of miles down the road and again include widely recognized names in the business.



V. ANALYSIS

A. Empirical Discussion

Nearly every statistical measure we used at every spatial scale points to the same conclusion: the payday loan industry targets military personnel. The evidence is overwhelming and incontrovertible. Our overall analysis included 20 states; 1516 counties; 13,253 ZIP codes; and nearly 15,000 payday lenders. Situated among those many counties and ZIP codes were 109 military bases and several dozen recently closed bases.⁵³⁶ Within three miles of open bases were 150 counties and 813 ZIP codes. Payday lenders were in these military-adjacent counties and ZIP codes at greater numbers and in greater densities in almost every state we examined. These counties and ZIP codes represent a wide range of ethnic, income, and population characteristics and none of these variables account for the clarity of pattern that we have witnessed. With striking regularity, the counties and ZIP codes most overrepresented by payday lenders had one thing in common: large military populations.

The consistency with which we found payday lenders overrepresented in military regions was remarkable. In twelve of the nineteen states where county-level data was available, the worst county in the state was a military county. In Florida, Washington, California, and Colorado the top three, four, five, and six counties respectively all had a military legacy. The only states in which a military county did not have the highest composite density of payday lenders were (1) Alabama, where the second and third worst counties were military counties; (2) Idaho, which has only one small Air Force base; (3) Louisiana, where the second and third worst counties house military bases; (4) Missouri, where there is only one large base, which is adjacent to the second worst ZIP code statewide; (5) Ohio, with only one base in a top-ten county; (6) Oklahoma, where again the second worst county is a military county; and (7) Tennessee, which has no large base of its own, but shares Fort Campbell with Kentucky. The 150 counties housing or bordering a military base account for roughly one-tenth of all the counties in our survey and they account for a quarter of the total number of banks. Yet those same counties contain one-third of the payday lenders.

Often the most populous counties in our survey had the most payday lenders statewide, but in terms of per capita density, the worst counties tended to be military counties. Among the military counties we surveyed, we found 4765

⁵³⁶ This number of bases includes only bases with over 550 on-base personnel, including civilians, according to the DOD's Directorate of Information Operations and Reports, Statistical Analysis and Information Division. See Department of Defense, *supra* note 287. Georgia's Fort Benning, which lies close to the Alabama border, and a few others, were also included in our study, but not counted among the 109 bases mentioned above.

payday lenders, which was 386 more than we predicted based on the population in these same counties. Seventeen of the 93 counties that had the highest per capita density of payday lending were military counties. Some of these counties, such as El Paso County, Texas, had huge populations while some, such as Mason County, Washington, had few people. However, both had military bases.

Moreover, we found the same pattern when we zoomed into the ZIP code level, often in even sharper focus. About sixteen million people live in a ZIP code near one of the bases in the nineteen states where ZIP code data was available, and well over a half-million of those people are currently serving in the Armed Forces. Including their families, this number probably reaches over one million. In these ZIP codes, we found about 1854 payday lenders and 3852 banks. This equaled 12.5% of the total number of payday lenders in our survey but only 8.5% of the banks in our survey. Given the population in these ZIP codes, this is about 370 payday lenders over the number we predicted based on the population in these ZIP codes. While 370 extra payday lenders may not seem an extraordinary excess, it is greater than the number of payday lenders in the entire state of Colorado, and if they were all in California it would be enough to service 5.6 million citizens.

In seven out of nineteen states, the single worst ZIP code in the state was adjacent to a military base. This is a momentous statistic given that many states have over a thousand ZIP codes statewide. Some of these worst-ranking ZIP codes would have been very difficult for us to predict before we began this study. Who among the casual observers of this industry would have guessed small towns like Lakewood, Washington; Radcliff, Kentucky; or Sumter, South Carolina would have the greatest combination of payday lending frequency and payday lending density in their states?

In five additional states, the worst payday lending ZIP code was either adjacent to a closed military base (California) or just beyond the three-mile range we set as our parameter for inclusion as an "adjacent" ZIP code. The statistical picture would have been even more compelling had we gone with a more liberal definition of geographic proximity. Many Air Force bases, such as Luke or Fairchild are isolated from the nearest commercial-retail district. This strategy removed several ZIP codes from our list, though they are by default the place where soldiers, sailors, and other service personnel and their families would take out a payday loan. Other ZIP codes were also left off our list because we used the primary on-base ZIP code to define the perimeter of what we consider the base, even though including off-base housing annexes and facilities would have included many more offending ZIP codes.

In several states, including Virginia, Washington, Colorado, and Texas, where multiple bases were found, more than half of the worst ZIP codes were within a few miles of a base. Only Ohio, Tennessee, and Florida were without a military-adjacent ZIP code among the ten worst in their respective states, and

these anomalies are easily explained. Ohio, for example, has only one base and the payday lenders and service families surrounding Wright-Patterson Air Force Base are divided among a dozen different nearby ZIP codes, of which three manage to rank among the worst 30 in the state. Tennessee only has the small Navy Support Facility and part of Fort Campbell, so there are few military targets for payday lenders in the Volunteer State. Still, the second worst ZIP code in Tennessee is just over five miles from Millington, where the Navy Support Facility is located and the second worst ZIP code in Kentucky serves Fort Campbell just over the Tennessee border. In Florida, the caveat we offer is that the second, third, and fourth worst ZIP codes in the state lie just outside our three-mile buffer but still within very easy commuting distances from the bases they serve.

The pattern of payday lender targeting becomes even more troubling when compared to bank location strategies. Banks did not follow the same location patterns as payday lenders, suggesting that neither local zoning ordinances nor ordinary business development patterns forced payday lenders into military counties, ZIP codes, and neighborhoods. Our study found that the ratio of payday lenders to banks was most lopsided in counties and ZIP codes with a military base. Twenty-seven of the worst 100 counties in our survey on our Location Quotient score were military counties, almost three times the number we expected to see.

Concentrations of competitive businesses are common in certain industries, and there are a variety of good reasons why such clustering happens. For example, some businesses benefit from cooperative agglomeration, as is the case with car dealerships, appliance stores, furniture stores and other retailers of expensive durable goods which find clustering together helps consumers comparison shop. Fast food franchises also agglomerate along certain high traffic corridors, but generally these are carefully calculated site location decisions that keep them, as a group, from exceeding the population threshold necessary for survival. In the case of payday lenders, we find the agglomeration pattern difficult to explain utilizing any of the standard rationales for such patterns.

There are businesses that agglomerate in certain spaces of a city because they are making a conscious effort to be close to their target demographic. We have no doubt that the military is a target demographic for the payday lending industry. Around each of the bases we analyzed, the greatest concentration of payday lenders anywhere in the county was within a few miles of the military base. Payday lenders crowd around the gates of military bases like bears on a trout stream. Around most of the major military installations we have mapped, we have found at least 20 and sometimes as many as 40 payday lenders within just a few miles of the base gates. The only logical reason that we can fathom as to why ten to 20 businesses competing against one another for customers would locate within a few miles of each other, while simultaneously forsaking less crowded locations elsewhere in the community, is that there is something peculiarly

profitable about the site of agglomeration.

Some would argue that the neighborhoods we have examined near bases suffer from poverty, have large minority populations, or high population densities, but this is not the case. We have found most military neighborhoods to be relatively prosperous, not particularly crowded, and generally unremarkable from a demographic standpoint. Indeed, in several instances, such as Oceanside, California, the neighborhood adjacent to the military base is affluent and without a large minority population. We have little doubt that the payday lending industry targets poor, minority, and crowded areas, but we can confidently assert that distance to military bases is the variable that best predicts a large number of payday lenders. When considered in light of the ancient history of predatory lenders targeting military personnel and the compelling body of social scientific literature suggesting financial vulnerability of service members, our findings should stand as conclusive proof that the payday lending industry targets members of the armed forces and their families.

B. Legal and Public Policy Considerations

1. Voluntary Compliance and Industry Best Practices

The public policy response of choice for the payday lending industry has been voluntary “best practices” lists written and sponsored by industry trade associations. Currently, two trade associations represent the interests of the payday lending industry: the Financial Services Center of the America (FiSCA) and the Community Financial Services Association of America (CFSA). FiSCA has a voluntary “code of conduct” which trade association members aspire to comply with.⁵³⁷ FiSCA’s code calls on trade association members to maintain “integrity” in eleven different business activities such as collection practices, invoking criminal process, consumer education, pricing and consumer charges, and extensions.⁵³⁸ For example, the code states:

Integrity in Invoking the Criminal Process. FiSca members will never threaten to file criminal charges against a customer merely for defaulting on a debt. Criminal charges can be appropriate where a customer seeks to defraud a FiSCA Member, such as by closing their checking account or passing a false

⁵³⁷ Financial Services Center of America, Code of Conduct (Feb. 7, 2001), www.fisca.org/FiSCACodeCcc.pdf [hereinafter FiSCA Code of Conduct].

⁵³⁸ *Id.* Other activities for which the code suggests acting with integrity include: marketing and advertising, operations, documentation, consumer’s right to rescind, in the industry, and as a money service business. *Id.*

instrument.⁵³⁹

Similarly, the CFSA best practices list encourages members of that organization to give full disclosure, truthfully advertise, encourage consumer responsibility, limit rollovers to four or the state limit, whichever is less, and comply with “applicable” laws.⁵⁴⁰ Recently, CFSA has also adopted a separate “military best practices” list. This list requires members not to garnish military wages, temporarily defer collection activity against a military customer deployed in combat, refrain from contacting commanding officers in an effort to collect a loan, honor the terms of any agreement, educate military customers, develop a brochure and a hotline, and develop and maintain a military best practices web site.⁵⁴¹

Neither trade association’s voluntary guidelines includes any form of price limitation, leaving members free to charge unlimited interest rates. Neither trade association has committed to refrain from refinancing one payday loan with another payday loan. With carefully qualified language, both policies appear to leave open the possibility of threatening borrowers with criminal prosecution.⁵⁴² Neither policy commits to comply with the Fair Debt Collection Practices Act.⁵⁴³ Neither trade association imposes any penalty or sanction on members who do not comply with their best practices. Also, payday lenders who do not pay dues to join either trade association do not make even a nominal commitment to comply with the policies. CFSA’s military best practices say nothing about obtaining judgments and then seizing automobiles or other property of service members, garnishing from bank accounts where wages are deposited, or garnishing the wages of service members’ spouses.

But perhaps more fundamentally, our empirical findings raise significant red flags about whether the payday lending industry will comply with voluntary standards. While collecting our data, in state after state we found significant numbers of payday lenders openly doing business who are not registered to make

⁵³⁹ *Id.*

⁵⁴⁰ Community Financial Services Association of America, Best Practices for Industry (Feb. 15, 2005), www.cfsa.net/genfo/egeninf.html [hereinafter CFSA Best Practices].

⁵⁴¹ Community Financial Services Association of America, Military Best Practices (2004), <http://www.cfsa.net/genfo/MilBestPractie.html> [sic].

⁵⁴² For example, FiSCA’s Code somewhat ambiguously authorizes members to threaten borrowers with criminal prosecution for “passing a false instrument.” FiSCA Code of Conduct, *supra* note 537. CFSA’s prohibition of criminal threats is similarly ambiguous. CFSA Best Practices, *supra* note 540.

⁵⁴³ By its own terms, the Fair Debt Collection Practices Act is not applicable to at least some payday lenders because it governs only professional third-party debt collection agencies, rather than originating lenders. 15 U.S.C. §§ 1692a(4), (6); 1692d (2004) (unlike “debt collectors,” “creditors” are not barred from harassment or abuse under the federal statute).

payday loans as required by state law.⁵⁴⁴ Moreover, dozens of lawsuits and enforcement proceedings are regularly brought by state attorneys general, financial institution regulators, and private consumer attorneys.⁵⁴⁵ Literally thousands of payday lenders around the country openly and systematically ignore state consumer protection laws.⁵⁴⁶ Despite trade association aspirational goals, no industry with which we are familiar, with the possible exception of the illegal narcotics business, so openly ignores the law. We do not see how reasonable observers of the payday lending industry can have faith in voluntary compliance standards. Either industry best practices will remain so substantively weak as to be irrelevant, or a large portion of lenders will not voluntarily comply. The financial incentives in lending at high rates to distressed and often uneducated borrowers appear to be too great to facilitate responsible lending in the absence of strict oversight. Finally, trade association voluntary guidelines will never recognize the possibility that communities in general, and military communities in particular, may simply be better off without easy access to triple-digit interest rate loans.

2. State Law

Payday lending law in the 20 states we studied can be divided into roughly six categories. The first and largest group includes thirteen states: Alabama, Arizona, California, Colorado, Idaho, Kentucky, Louisiana, Missouri, Ohio, South Carolina, Tennessee, Virginia, and Washington. These states have all clung to only a pretense of price control by adopting fee limitations equivalent to between 390% and 1950% per annum. Many of these states have ancillary rules, such as dollar amount limitations, roll-over limitations, and disclosure rules. Most of these provisions are either redundant with federal law, meaningless, or largely unenforceable. More likely than not, these ancillary provisions were mere bargaining chips used by payday lending industry lobbyists to create an illusion of consumer protection where there is little or none. Certainly there are laws among these states, Missouri's legislation for example, which stand out as less consumer—and service member—friendly than others. And, there are some states, such as Colorado, that have put more administrative backbone into enforcing their laws. Yet, none of the consumer protection statutes in these states have led to any identifiable reduction in the numbers of lenders clamoring to leech the income of military personnel.

Second, Florida and Oklahoma probably deserve separate mention from the first group of states if only because they have adopted laws requiring lenders to

⁵⁴⁴ See *infra* notes 360, 406, and 453 and accompanying text.

⁵⁴⁵ See *infra* notes 369, 443, and 534 and accompanying text.

⁵⁴⁶ See *infra* notes 50, 59, and 516 and accompanying text.

use statewide internet-based databases to verify that borrowers do not have outstanding payday loans to other companies. Still, it is far from clear whether payday lenders will actually comply with the database requirements. For example, our data collection efforts suggest that many payday lenders in both states have not bothered to obtain state payday lending licenses.⁵⁴⁷ Certainly these lenders cannot be trusted to list each individual loan on the state's database system. Accordingly, the effectiveness of these database systems remains, at least to some degree, an open question.

The third group of states includes Delaware and South Dakota, which have abandoned consumer protections in order to attract financial service industry jobs to their small, primarily rural states. Similar to the first and second group of states, Delaware and South Dakota have no laws which might exert a restraining force on payday lenders seeking to target military personnel. And what may be more significant, with no price controls whatsoever, these two states have become the home of choice for banks that assist payday loan companies in circumventing consumer protection laws in other states. Delaware and South Dakota have legally specialized in undermining the consumer and service member protection efforts of their neighbors.

Texas, North Carolina, and New York all have unique regulatory environments which are materially different from every other state we studied. While Texas has not adopted legislation specifically addressing payday lending, its price controls are loose enough that payday lenders can still do business within the bounds of Texas law by lending at rates in the neighborhood of 309% per annum. Instead, soldiers in Texas, perhaps more than any other state, have suffered at the hands of the "charter-renting" legal strategy. With the cooperation of banks in Delaware, South Dakota, and other more loosely regulated states, thousands of payday lenders in Texas simply ignore the will and commands of the Texas legislature.

From 1997 to 2001, North Carolina was firmly within our first classification of states. But when the legislature allowed its payday loan licensing law to expire, the state became one of only two states we studied which retained the traditional small loan laws prevalent in the United States for most of the twentieth century. Our empirical results in North Carolina show how difficult it can be for legislatures and regulators who wish to turn back the clock. Once a payday lending industry is established, it is difficult to control. Payday lending in North Carolina continues today under a variety of questionable guises. There, the legislature made a deliberate choice to protect soldiers at Fort Bragg, Marines at Camp LeJeune, and others. It remains to be seen if the courts, regulators, and future legislators will have the will power to stand by their decision.

In the empirical analysis, the State of New York stands alone. Of every major

⁵⁴⁷ See *infra* notes 289, 406, and 484 and accompanying text.

military base we studied, Fort Drum in upstate New York is the one location where service members and their families are not targeted for triple-digit interest rate loans. Ironically, the law in New York is not materially different from the law in North Carolina. Herein lies the most important legal insight of our study: state governments retain the power to prevent payday lending within their borders, both to military service members and to all consumers. In state after state, legislators have been sold on the notion that regulating payday lenders with a licensing statute is better than traditional interest rate caps since federal banking regulation makes payday lending inevitable anyway.⁵⁴⁸ When out-of-state banks have rented their charters to payday loan companies hoping to cash in on the large and potentially lucrative New York market, the state has successfully sued the banks accusing them of criminally facilitating violation of the state criminal usury law.⁵⁴⁹ Similarly, when payday lenders have tried to disguise their loans in thin veneers such as "catalog sales," the state has aggressively pursued management of these companies obtaining judgments that hold owners personally liable.⁵⁵⁰ New York's stubborn enforcement of its 25% criminal usury cap has acted as a serious deterrent to banks and payday loan companies who consider flouting the will of the New York legislature. This is not to say the Ft. Drum area is free from other potential financial hazards. Credit card lenders, finance companies, car dealerships, rent-to-own furnishers, and pawnshops—as well as banks, thrifts, credit unions—all profitably provide copious amounts of credit to soldiers near Ft. Drum. Yet all of these businesses profit with less brazen rates and collection practices than payday lenders. Accordingly, the New York approach should serve as a model for North Carolina, Texas, and any other state wishing to more carefully protect the welfare of its soldiers and citizens than does Delaware or South Dakota.

3. Federal Law

It is a bizarre twist of fate that gave an agency with the primary mission of protecting banks the primary responsibility for protecting consumers from overreaching banks. Payday loans are a highly controversial financial product with terms nearly indistinguishable from those offered by our nation's first loan sharks, the nineteenth century salary lenders. Average payday loans carry interest

⁵⁴⁸ See, e.g., Shean, *supra* note 14 ("Del. Harvey B. Morgan, patron of the bill said he and several other House members were uncomfortable with payday-loan practices. However, they decided that 'payday lending is here' and that some form of state regulation was needed. . . .").

⁵⁴⁹ *People v. County Bank of Rehoboth Beach*, 1:03-CV-1320 (N.D.N.Y. May 25, 2004), www.abanet.org/buslaw/committees/CL230044pub/links.shtml (subscription required).

⁵⁵⁰ *People v. JAG NY*, 794 N.Y.S.2d 488, 489 (N.Y. Sup. Ct. May 5, 2005).

rates nearly twice as high as average rates of extortionate New York mafia syndicates.⁵⁵¹ Appreciating the profound reputational risk associated with this type of loan, the OCC has concluded that payday lending partnerships unacceptably endanger the safety and soundness of national banks. Unlike the OCC, the FDIC has taken a narrow view of safety and soundness. Our empirical results should serve as a wake-up call to the FDIC as to how serious a reputational threat payday loans are for state banks. For over a thousand years, citizens have surprised lenders and governments with fury over loans to soldiers at loan shark prices. Not only the FDIC, but the vast majority of more responsible banks who eschew payday lending should carefully consider whether the public will find an abuse of trust in triple-digit interest rate loans to eighteen-year-old soldiers and their families.

Independent of safety and soundness concerns, the FDIC's actions have also hobbled state consumer and service member protection law across the country—all for the benefit of twelve small banks. By creating a plausible veneer of legality on bank-payday company relationships, the FDIC has confused and frustrated enforcement of state regulations. But perhaps even more importantly, the FDIC's indifferent response to charter-renting places state legislators who wish to protect soldiers from predatory payday lenders in an untenable position. State legislators have been led to believe that payday lending is inevitable because the FDIC tolerates charter-renting by out of state banks. Many state legislators believe they can only protect consumers from in-state lenders because out-of-state lenders are beyond their reach. While New York's experience shows that this is not necessarily true, there should be no doubt that many state legislators around the country would prefer double-digit interest rate caps if they applied to all businesses equally. However, these state legislators cannot risk being accused of "discriminating" against local businesses in favor of large out-of-state interests. It is one thing for the FDIC to be ambivalent about protecting consumers, but it is something entirely different for the FDIC to force that ambivalence on other institutions whose mission is protecting their local constituents' well-being. Indeed, a significant amount of the impoverishment suffered by our nation's soldiers, sailors, Marines, and airmen at the hands of payday lenders is rightfully laid on the doorstep of the FDIC.

4. *Military Leadership on Payday Lending*

Just as military leaders must care for the physical and mental health of their people, so too must they take responsibility for service members' financial

⁵⁵¹ Compare FOX AND MIERZWINSKI, *supra* note 29 (national study showing average payday lender interest rates of 474% per annum) with Comment, *Syndicate Loan-Shark Activities and New York's Usury Statute*, 66 COLUM. L. REV. 167, 167 (1966) (reporting extortionate mafia loanshark interest rates averaging 250% per annum).

health. For too long, civilian government has stood by while a parade of cheats and charlatans have preyed on young service members and their families. With the increasing strain on military resources due to overseas engagements, the military should not expect to use its own funds to bail out enlisted personnel from financial traps, nor can the military expect that financial education and counseling will solve their problems. The expense of designing programs that will make a significant dent in current payday lending trends will be far beyond military capabilities. The Armed Forces cannot take the place of the nation's public school system. Commanding officer "off limits" orders are also unlikely to be a viable long term solution. These orders are difficult to enforce and monitor: payday lenders will in most cases be free to ignore them, and the orders only last as long as a given commanding officer remains stationed at any one location. Moreover, these orders have a side effect of increasing blame and pressure on those service members who disobey them when seeking quick solutions to their financial problems. These orders also do not bind military spouses, making them a partial solution at best.

Instead, military leaders should actively engage state and federal regulators, state legislatures, and Congress to lobby for better consumer protection laws. In particular, our data suggest that the Pentagon should advocate for a no-exception, criminal usury law with robust government enforcement and private litigation rights at both the federal and state level. The United States rose to power during the twentieth century with criminal usury laws limiting interest rates to a moderate range of around 18 to 42%. It was not until we abandoned these laws that payday lenders came to cluster around military bases in the current numbers and with such onerous contractual terms. Moreover, just such a law, as currently found in New York, has been the only legal strategy in the 20 states we surveyed which successfully protected service members from triple-digit interest rate loans. In furthering this goal, the Pentagon should designate an office with responsibility for tracking state and federal predatory lending legislation, assisting consumer advocacy organizations, and coordinating with state and federal consumer protection agencies. Above all, individual military leaders should not underestimate their influence and political capabilities. Military leaders possess a unique and persuasive voice in advocating for consumer protection of their enlisted personnel. Indeed, the military may be the one institution with the esteem and independence capable of trumping the millions of dollars predatory lenders will readily spend influencing legislative and public opinion with respect to their products.⁵⁵²

⁵⁵² It is worth noting that current U.S. House of Representatives Majority Leader Tom DeLay gave a keynote address and attended a closed-door fundraiser at this year's annual payday lender trade association convention in Hollywood, Florida. CFSA Convention Schedule, CHEKLIST, Program Guide to the 2005 CFSA Annual Meeting in Hollywood, FL (Mar. 2005).

VI. CONCLUSION

This Article has conclusively demonstrated that payday lenders target military personnel. By surveying 20 states, 1516 counties, 13,253 ZIP codes, nearly 15,000 payday lenders, and 109 military bases, this research systematically tracked the location patterns of payday lenders in a preponderance of the military communities in the United States. Even when accounting for commercial development patterns and zoning ordinances with bank locations, payday lender location patterns unambiguously show greater concentrations per capita near military populations. Moreover, of the 20 state legal environments studied, only one was home to a prominent military base where troops were not targeted for payday loans: Fort Drum in upstate New York.

For all those who genuinely care for the welfare of American soldiers, sailors, Marines, and airmen, these empirical results should be profoundly troubling. Supporting the troops should not be merely an empty slogan. Ironically, many of those who claim most vocally to support the troops are the same individuals who adopt laws allowing predatory lenders to target those troops. What use is a Congress that eats "freedom fries" in the Capitol cafeterias but ties the hands of state regulators who hope to protect soldiers from predatory lending?⁵⁵³ For the great majority of the past century, the American government protected service members from high-cost predatory loans with usury laws limiting interest rates to between 18% and 42% per annum. Through federal preemption and state legislative change, these laws have given way to an environment in which service members are literally surrounded by lenders clamoring to charge annual rates averaging around 450%. Military personnel both in ancient history and contemporary America have chronic financial vulnerabilities owing to their demanding and semi-nomadic lifestyles. Inevitably, many struggling military personnel and their families find the temptation of short term financial quick fixes advertised as "easy," "no hassles," "no credit check," or "quick cash" too difficult to pass up. For the reasonable and caring, supporting the troops should include an emphatic return to the traditional usury laws insisted upon by previous American generations.

⁵⁵³ In March of 2003, with tensions rising over French opposition to American foreign policy, the U.S. House of Representatives changed menus in the House cafeteria to serve "freedom fries" instead of french fries. Sheryl Gay Stolberg, *An Order of Fries, Please, But Do Hold the French*, N.Y. TIMES, March 11, 2003, at A5.